

Parliamentary Government In India

PARLIAMENTARY GOVERNMENT IN INDIA

By

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Dedicated

to

the loving memory

of

my grandfather

Rai Lalit Mohan Singh Roy Bahadur.

*whose affection and blessings
have been the greatest assets
of my life.*

FOREWORD

THERE are very few among our public men who are better qualified than Sir Bijoy Prasad Singh Roy to write on Parliamentary Government in India, and I am glad that he has in 7 chapters given us not only the history of the development of political reforms but also a well-balanced estimate of the working of provincial autonomy. I have with great pleasure gone through the various chapters in this book and, without saying that I agree with everything that Sir Bijoy has written, I am happy to say that there is a good deal in it with which I find myself in agreement.

The chapter on responsible government in the provinces is particularly interesting. At one place he refers to coalition ministries. A coalition, says Sir Bijoy Prasad Singh Roy, 'substitutes government by individuals for government by political principles' because compromise is the first and last principle on which a coalition can be maintained. 'A coalition cabinet normally is the consequence of emergency conditions. But in India the party system is undeveloped. The Congress is not a party but a platform for galvanising discontented elements against British rule in India and for launching the struggle to free the country from alien rule . . . The Moslem League is frankly committed to establishing the ascendancy of Moslems and thinks in terms of Moslem interests and Moslem grievances without reference to the country as a whole. The Hindu Mahasabha is the antithesis of the Moslem League. The Liberal Federation was the only all-India political organization which could be built up into a political party for the purpose of exploring

all the possibilities afforded by the Constitution of self-government, but its organisational machinery was not effective to influence the electorate." I have quoted this passage at length not because I agree with everything that is contained in it but mainly because I think that much of our present-day trouble might have been avoided if instead of party governments which were established in the provinces in 1937, coalition governments had been established. In the existing conditions of India none of us can afford to be particular about conformity to well-established constitutional theories, and compromise seems to me to be the first and the last necessity at present. Perhaps in course of time we may be able to evolve a form of responsible government, not necessarily the same as that which obtains in England or in the Dominions, but one which may be more suited to the needs and temper of the country. At the same time I do wish to give a warning against the view which is coming into fashion in England and in certain circles in India that parliamentary government is not suited to India and will never succeed. The causes which are assigned at the present moment for this so-called failure are at best superficial and not altogether free from an ancient prejudice against the application of the principles of parliamentary form of government to India. It is not however my purpose to develop this idea in this Foreword.

There is a good deal of food for reflection to be found in Sir Bijoy Prasad Singh Roy's three chapters on "Responsible Government in the Provinces", "Provincial Autonomy", and "The Party System", and I hope a study of this book will provoke some thought in political circles. Sir Bijoy Prasad Singh Roy has always been known to be a thoughtful, practical and fair-minded politician.

He has had unique experience of working the constitution in Bengal, and to-day he occupies a front-rank position among Indian politicians. I think the publication of this book adds to the many services that he has rendered to the country. I do not think, as I have already indicated above, that his views or treatment of certain questions will meet with universal approval. Nevertheless he has stated the case for Indian self-government with clearness, force and thoroughness. He has spared neither the Congress nor the Moslem League nor the Hindu Mahasabha. If he is more sparing to the National Liberal Federation it is easily understandable. The fact of the matter seems to me that a new race of politicians has yet to spring up in this country—men who will, first and foremost, think in terms of country rather than in terms of party. I do not say that the party system in India has been a failure altogether. On the contrary, my grievance is that it has been far too successful, and it would have been much better if the rigidity with which the party machine is worked in India leading at times to the concentration of power in a few hands had been less in evidence. Nevertheless though mistakes have been committed there is no reason to suppose that the future will not be better than the past and that parliamentary form of government, which has not been more than 3 years in action, is doomed to failure as some of our critics would like to make out.

May 15, 1943.

TEJ BAHADUR SAPRU.

PREFACE

India has come to believe that her political emancipation lies through parliamentary democracy and has been trying to reach the goal for the last half a century. In this belief she has been encouraged by Great Britain from time to time though such encouragement has not been infrequently interspersed with retrograde policy and unsympathetic utterances of British Ministers regarding Indian aspirations. Whether the post-war world will stick to the ideal of parliamentary democracy or will favour some other form of government is yet undecided. On the side of the Allied Powers the war is being fought with the avowed object of vindicating Democracy. India may therefore reasonably expect that in spite of the present political deadlock for which both we and our rulers must share responsibilities, and the reluctance of Britain to part with power, it will not be easy, on the termination of the hostilities in favour of the Allies, to resist India's claim to be admitted as a full-fledged member of the British Commonwealth of Nations with option to secede from the Empire. For all practical purposes it is difficult to foresee anything beyond this consummation. While aspiring to self-rule India cannot however afford to ignore her domestic problems. The existence of the Indian States and the claim of the Moslem community to be treated as a separate nation, and as such to be conceded the right of forming their own separate State in which Moslem culture and Moslem ideas regarding administration will get free play and the community will be in a position to introduce Islamic Democracy unhampered by the majority community, *viz.*, the Hindus,

raise issues of far reaching consequence. But whatever may be the zonal demarcation, from the general trend of events and surrounding circumstances one is probably justified in assuming that in the Pakistan area also, even if it materialises, the system of Constitution will be Parliamentary Democracy and nothing else. This assumption is prompted by the hope that at the time of the actual framing of the new Constitution the Indian leaders, both Hindus and Moslems, will display a sense of realism which will enable them to claim with united voice and to accept on behalf of the people of India freedom as is now enjoyed by the great Dominions of the British Empire.

As one who has been a member of the provincial legislature from the beginning of the Montagu-Chelmsford Reforms and had the privilege of being associated with the working of the Constitution as a Minister in Bengal for more than a decade, I felt naturally inclined to record my impressions on the subject on relinquishing office at the end of 1941. My approach to the Indian constitutional problems in this book is not that of a politician but of a student of politics who had an opportunity of studying the actual working of this delicately poised constitutional machinery. In this book the expression of personal opinion on the existing political problems or suggestions regarding their solution has been carefully avoided so as not to give any impression of attempting to advocate particular political theories or of supporting or criticising any of the existing political parties in India. I have traced the origin and development of Indian political aspirations and of party alignments in the historical background which, I feel, is essential for correct appreciation of the situation as it has emerged through the political struggle of so many years. I

shall consider myself amply rewarded if this analysis and account of the working of the parliamentary system serves as a useful book of reference to students of Indian politics and even as some help to the framers of the future Constitution. I had to refer to events and occasions in which some politicians figured prominently, but the object was by no means to support or criticise their actions in any way but merely to illustrate my points.

I am obliged to the Right Hon'ble Sir Tej Bahadur Sapru, P.C., K.C.S.I., LL.D., for kindly favouring me with the Foreword. No one is more competent to speak on the Indian constitutional questions to-day than he, and I have no doubt that his observations will inspire reflection in the minds of those who are devoted to the cause of India's freedom.

Mr. W. C. Wordsworth, M.A., C.I.E., M.L.A., in spite of his pre-occupations very kindly went through the manuscript and the proofs while the book was in press, and I feel deeply grateful to him for this invaluable help which I received as one of his old students. I am also greatly indebted to Mr. Sachin Sen of the British Indian Association, Calcutta, for helping me with valuable material and suggestions. My thanks are no less due to Mr. Prabhanath Singh Roy, O.B.E., for preparing the index. The last but not the least I would like to offer my thanks to Mr. Arthur Moore, lately Editor of the *Statesman*, for suggestions regarding the scheme of my book, when I first disclosed to him the idea of undertaking such a work.

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15, Lansdowne Road, -
Calcutta,
July 1943.

CONTENTS

CHAPTER		PAGE
	I—Historical Introduction	1—101
	After-effects of the Mutiny ..	3
	Spread of Western Ideas ..	4
	Religious Revival	5
	Indian Press	9
	Representative Government ..	11
	Policy of Distrust	13
	Indian Nationhood	15
	Lord Ripon's Contributions ..	16
	The Indian National Congress ..	18
	Stages in the Congress Movement ..	22
	Constitutional Reforms ..	27
	Birth of Extremism	37
	Partition of Bengal	42
	The Movement for Complete Independence	50
	Morley-Minto Reforms ..	55
	Montagu-Chelmsford Reforms ..	63
	Working of the Reforms of 1919	69
	Development of Ministerial Respon- sibility	87
	The Central Government's Control	97
CHAPTER	II—India and the British Common- wealth	102—144
	Characteristics of the Common- wealth	103
	The Position of India ..	105
	India and the Crown	109
	The Interim Arrangement ..	121
	The Pledge of Dominion Status ..	128
	The Cripps Mission	132

	PAGE
CHAPTER III—The Federation of India	145—179
Genesis of the Federal Principle ..	146
The Indian States	155
The Opposition of Different Parties	166
Postponement of Federation ..	174
CHAPTER IV—Responsible Government in the Provinces	180—281
Pre-Requisites of Parliamentary Government	180
Limitations on Responsible Government	194
The Congress and Office Acceptance	205
Ministerial Responsibility ..	225
The Concept of Speakership ..	251
Parliamentary Secretaries ..	252
The Bengal Ministry	253
The Cabinet Office	276
CHAPTER V—Provincial Autonomy	282—345
The Provincial Legislatures ..	286
India—A Economic Unit ..	291
Provincial Finance	294
The Distribution of Legislative Powers	303
Special Legislative Powers ..	312
Rules of Construction ..	320
Ambit of the Provincial Legislature	323
New Amendments	332
The Civil Service	336
Provincialism	337
The High Court	339
The Federal Court	341

	PAGE
CHAPTER VI—The Party System ..	346—384
The Swaraj Party ..	347
The Congress Party ..	350
The Forward Bloc ..	355
The Liberal Party ..	358
The Justice Party ..	360
The Unionist Party ..	360
Mr. Jinnah and the Moslem League	362
The Azad Moslem Board ..	371
The Hindu Mahasabha Party ..	373
The War Situation ..	375
The Position in Bengal ..	378
CHAPTER VII—The Background of Moslem	
Awakening ..	385—411
Meeting of Rama and Rahima ..	387
The Mogul System ..	389
British Ascendancy and Influence ..	391
Germs of Moslem Discontent ..	393
Sir Syed Ahmad's Contributions ..	397
The Movement for Separate Electo- rates ..	403
Moslems and the League ..	407
<i>Index</i> ..	413

PARLIAMENTARY GOVERNMENT IN INDIA

CHAPTER I

HISTORICAL INTRODUCTION

THE INDIAN MUTINY of 1857 may be accepted as a convenient landmark for historical retrospection of events, social, political and administrative, leading to the formation and development of modern India with all her aspirations and complex problems. The acquisition of territory by the East India Company and the gradual substitution of the existing machinery of administration by a western system, initiated and controlled by British officers both at the centre and in the districts, introduced a new element in the country, to which Indians submitted at the beginning without realising fully the implications of the change or appreciating the far-reaching effect of the new order on the social and economic life of the people. The country was ill-organised and disunited from internal feuds and exhausted, to some extent, by repeated foreign invasions and internecine war.

The East India Company, as soon as they could eliminate their western rivals, the French and the Portuguese, had not much difficulty in extending their territorial possessions or establishing their supremacy over Indian rulers who, in most cases, either submitted voluntarily by making a protective alliance with the British against their own neighbours or yielded after feeble resistance with some notable exceptions, such as the Sikhs, Tipu Sultan, and some of the Mahratta States. Having established their sway, the Company soon turned their attention to the consolidation of their position through better control over the revenue system of the country within their jurisdiction, and interference in the affairs of their

friends, allies and protectorates—the Indian States and even independent kingdoms such as Bhutan, Nepal and Oudh. Recovering from the stupor of the first seventy five years of British rule, the Indian community began to feel the weight of foreign domination and the tightening of the grip by their new ruler. The oriental mind reacts easily to religious sentiment and is always prone to resent interference with social practices which are often considered to be based on religion and supposed to be themselves sacred. The wars of aggression beginning with the Rohilla war of Warren Hastings, the annexation policy of Wellesley, and lastly, the doctrine of lapse, and the annexation of Oudh on the plea of mismanagement by Lord Dalhousie filled the cup of bitterness for a large section of Indians, and with an appeal to the religious susceptibilities of the Indian army, Hindu and Moslem, discontent was effectively fomented.

As we study the history of the rising in 1857 against the background of general discontent in the country, it will not be wrong to describe the Indian Mutiny as the first attempt to free India from foreign domination which was already proving irksome to Indians. The British nation too had interpreted the rebellion in that light, and the extreme harshness with which the rebellion was put down or the severity of reprisal on those who were supposed to have sympathy with it was wisely tempered with general clemency. The administration of the country was transferred from the trading Company to the British Crown, and a noble and generous assurance of non-interference by Government with the religion of the people and a promise of absolute equality of treatment regarding appointment to the public services and an assurance about civic rights were conveyed to the people of India in the Queen's Proclamation which came to be regarded as the charter of Indian citizenship. Administrative changes and recognition of some of the civic rights of the Indian people that followed the Mutiny may be regarded as the

reaching of the first milestone towards that goal of political emancipation, the journey to which is still continuing.

After-effects of the Mutiny

Lord Curzon referring to the Mutiny said that it had left not only England vindicated but India pacified. It is difficult to say how far India was really pacified. But it is no doubt correct that partly overpowered by the superior armaments and better resources of the ruling power who could command the willing and unwilling co-operation of a large number of Indians including the the princes and the Sikhs in the Punjab, the authors of and sympathisers with this violent movement soon came to realise their own limitations, and all overt acts of disloyalty to the British Government were abjured for a long time. The Mutiny had a liberalising effect on the administration and opened up a new vista of moral and material progress for the country. A policy of appeasement, offering new opportunities to Indians of acquiring education and culture on the western model in order to enable them to equip themselves for some of the administrative appointments, was adopted by Government. In the sphere of material progress, Government embarked on a new policy of development of communications by the establishment of railways and improvement of roads and steamer services. These improvements were undertaken partly for facilities of military strategy which were found badly lacking during the troublesome days of the Mutiny, and partly for assisting the commercial ventures of British capitalists who were greatly encouraged by the peace and tranquillity in the land that followed the suppression of the Mutiny. The establishment of the universities in Calcutta, Bombay and Madras, immediately before the suppression of the Mutiny, led to the spread of English education in the country through the establishment of schools and colleges, and they provided the greatest bond of unity between the East and the West. Bengal, more than any other province,

since the seat of the British Government was in Calcutta, took full advantage of these new opportunities of education and culture to which her people had been admitted since the foundation of the Hindu College.

Spread of Western Ideas

The educational policy of Warren Hastings and the establishment of the Hindu College along with the efforts of Christian missionaries had sown the seed of Western education and culture in Bengal, and it gradually spread to the rest of India. But the credit of giving impetus to the spread of Western education with English as the medium of instruction must go to the Government of Lord William Bentinck (1830-34). It was reserved for the famous Christian missionaries of Serampore, near Calcutta, Dr. Carey and John Marshman, and the great educationists like Raja Rammohan Roy, David Hare and Lord Macaulay, to chalk out the educational policy which was finally adopted by Government. The introduction and spread of Western education liberalised the minds of young Indians. In the first impact of Western ideas on ancient oriental conservatism, young students lost their moorings and learnt to detest every thing Indian including religion and social customs, and developed a strong liking for European culture, English literature, Christian religion and British manners and customs, though most of these English-educated persons were utterly ignorant about their own religion and literature. Many became Christians, and Hindu society seemed to be diving headlong towards Anglicism in every respect. But the forces of reform were simultaneously at work, although their influence was still confined within an extremely limited circle.

Raja Rammohan Roy, a great oriental scholar, devoted himself with commendable energy and ability to the reform of the Brahmanical religion, by pointing out the abuses that had obscured the essence of true Vedic religion and

placed the forms of religion in the forefront in disregard of its substance. This led to the foundation of the Brahmo Samaj which in time attracted a large number of advanced and educated people of the community. Rammohan Roy started the movement, though it remained, more or less, an intellectual and academic one during his life time. In the hands of his followers, Maharshi Debendra Nath Tagore and Keshab Chandra Sen, the movement became a living force and broadened the outlook of the educated community. It made them interested in their own religion and culture and stemmed the tide of Anglicism in cultured society. While the study of Western philosophy, literature and politics widened the mental horizon of Bengali students, kindled their imagination, influenced their character and made them exponents of rational religion, it also aroused their patriotism. Love of everything British created a yearning in them for the introduction of British Parliamentary institutions in their country and for Indians to be treated on an equal basis with the British.

Religious Revival

The patriotic inspiration of the people received a great impetus from the new religious movement which unfolded before them the high cultural and religious attainments of ancient India and fostered in young English-educated Indians a passionate devotion to the culture and noble traditions of their motherland. Brahmoism had a strongly sobering and stabilising influence on Bengali society. The new religion like orthodox Hinduism drew its inspiration from the Vedas, but it discarded the caste system and recognised the universal brotherhood of man in principle. In practice, however, the transition from the original Brahmo Samaj of Raja Rammohan Roy to the new dispensation of his follower, Keshab Chandra Sen, or to the still more liberal and democratic church known as the Sadharan Brahmo Samaj, was a tardy process. The new religion preached high ethical principles and was catholic in

admitting people into its fold without any distinction; it opposed sectarianism in any manner or form. It thus inspired educated Hindus with a sense of unity and common brotherhood, to which they were unaccustomed. Divided as Hindus are into many castes and sub-castes with all their barriers and problems of untouchability, the removal of social restrictions and the introduction of inter-marriage amongst the members of different castes were directly conducive to the feeling of common citizenship and helpful, in later years, for the development of greater political consciousness and of Indian nationhood. Moreover, the removal of orthodoxy which was directly encouraged by the Brahmo Samaj movement enabled cultured Hindus to visit Europe. This by itself had a great educative value. Coming in direct contact with the West, young Indian students who began to visit Europe for education and training developed love for political freedom and liberation from the social restrictions imposed on society on religious and moral grounds and through customs which were inconsistent with advanced thinking and the culture of an age of science and industrial progress. English education and contact with European culture, science and literature, along with the widening of the outlook of young Indians, developed in their minds a passionate admiration for British Parliamentary institutions, and made them gradually conscious of the political inferiority of their position, and alive to the economic exploitation of their country by British capitalists, with its destruction of India's indigenous cottage industries and arts, which at one time commanded the European market and used to be the livelihood of a large number of their countrymen.

The new religious movement in Bengal had its echo in Southern India as well as in the Punjab. The spirit of revolt in religion was evident practically throughout India, especially in Bengal, Bombay and the Punjab. The Brahmo Samaj movement of Bengal appeared as the Parthana

Samaj in Bombay under Ranade, one of the social reformers and leaders of the Congress movement in that presidency. He later became a Judge of the High Court of Bombay. In the Punjab the Arya Samaj movement of Dayananda Saraswati had the same liberalising influence on English educated Indians, and it also checked their tendency to heterodoxy or heresy in the same way as the Brahmo Samaj movement did in Bengal. The preachings of Swami Dayananda brought about a religious renaissance in the Punjab. The Arya Samaj movement was nationalistic in outlook and "to some extent aggressive in its patriotic zeal." Like all other forms of the Hindu religion, it drew its inspiration from the Vedas and acknowledged their infallibility, but it definitely discouraged orthodoxy and followed a militant policy for the eradication of polygamy, polytheism, idolatry, social evils and religious superstitions. The movement thus contributed directly to the development of national character and self respect, and fostered in educated Indians a desire for proper appreciation of the principles of the Vedic Hindu religion free from all the abuses which had grown around it in course of time. The Gurukul cult of the movement, supporting the Vedic ideals of brahmacharyya and religious service, was represented by Swami Shradhananda, the social reformer, while the phase of the movement that favoured absorption of Western culture and synthesis of the culture of the East and the West, for the political and social advancement of the country, was represented by Lala Lajpat Rai and those of his school of thought.

Another religious movement that had great influence on the social and political history of India was the theosophical activities of Col. Olcott, Madam Blavatsky and Mrs. Besant. This movement emanated from the South. Though cosmopolitan in outlook, the "theosophical movement laid special emphasis on rediscovery as well as rehabilitation of all that was great and glorious in oriental culture."

The latest phase of religious revival in Bengal centred around Ram Krishna Paramhansa and Swami Vivekananda. Ram Krishna, a simple Brahmin, preached the cult of Bhakti and used to lose himself in trance or "Nibikalpea Samadhi" in contemplation of the Supreme Being. He was no religious preacher, but his divinely inspired personality attracted religious reformers like Keshab Chandra Sen, literary geniuses like Girish Chandra Ghose, and many other highly cultured contemporary Bengalis. Towards the later part of his life Ram Krishna was an exponent of the synthesis of all religions and advised those who approached him to practise the religion of universal love which was akin to the Vaishnab religion. Swami Vivekananda came in contact with him in early life. His was a dynamic personality. He was a yogi, a religious reformer, and a preacher of the reformed Hindu religion. He travelled all over India, attended the religious Congress at Chicago in America in 1893 and made a great impression on Americans. Many became his disciples. On his return to India, he preached the truth of the Vedic Hindu religion, worked incessantly for the uplift of the masses and remonstrated with his countrymen for neglecting the down-trodden in society. He pointed out, in his forceful and inimitable language, that the degradation of India was largely attributable to her neglect of the so-called untouchables in society. Swami Vivekananda inspired his countrymen with the ideals of social service, created a band of selfless workers to look after the poor and helpless, and instilled in these young workers a spirit of service, devotion and self-respect. His preaching opened the eyes of young India, made cultured and educated citizens self-conscious, and filled them with pride for the Hindu religion, its ancient traditions, high ideals and glorious achievements. He gave a fresh impetus and a new turn to the spirit of nationalism which had been slowly, though consciously, developing in Indian minds since the days of Raja Ram Mohan Roy and found expression in the

movement for social reform in the pre-Mutiny period and in the desire of English educated Indians to be treated on the same basis as the British in this country and in the claims for the establishment of Parliamentary institutions in India on the British model.

It is not possible to study the history of the origin and growth of the Indian political movement, leading to the introduction of autonomy in the provinces, the demand for Dominion Status and later on for complete independence for India, without proper appreciation of the various factors tending to the development of the psychology that inspired the political aspiration or that helped the building up of the life and character of the people in putting forward the national claim on behalf a community that was supposed to have lost all sense of unity, and was greatly handicapped by internal dissensions and religious differences. The religious movements that preceded the political renaissance in the seventies of the nineteenth century were very helpful in rousing the consciousness of the people and bringing about their unity in spite of all apparent disunity, and in reviving their self-respect, so foreign domination became more and more irksome to Indians.

Indian Press

The Indian press voicing the opinion of the people and effectively advocating the advancement of their political rights did not come into existence till the seventies of the last century, although there were several vernacular newspapers and Indian conducted journals that tried to give expression to Indian opinion as far as it was possible in the pre-Mutiny days and in the decade immediately following the revolution. Sir Charles Metcalfe abolished all restrictions on the Indian press and granted it full liberty to express its views. During the Mutiny, Government decided to curtail this freedom, and Lord Canning's Government passed the Press Act of 1857 (Act XV of 1857). This

Act prohibited the keeping or using of a printing press without licence from Government, in granting which they had full discretion. Some of the European-owned newspapers of the time such as the *Friend of India* (now *Statesman*), as well as Indian-owned papers such as *Sultan-ul-Akabar*, *Samachar Sudharsan*, *Gulshan-i-bahar*, *Harkara* and the *Indian Mirror* freely criticised Government policy and expressed opinions regarding contemporary events. Government, at one stage, encouraged free expression of views by the Indian press so that they might be in touch with the real feelings of the Indian community and adjust their policy accordingly as far as Government considered it desirable. The *Englishman* represented the European and Anglo-Indian views in the country. The *Hindu Patriot* was one of the best conducted and representative newspapers, and Government attached considerable importance to its views. In the hands of Harish Chunder Mukherji and Kristo Das Pal it became a power in the land; though largely representing the views of the landed interests, it also gave expression to the opinion of the English educated and politically minded section of the community who, in collaboration with the landed gentry, founded the British Indian Association in 1851. But it was not till the foundation of the *Bengalee* by Babu Surendra Nath Banerjea, as he then was, in 1879, that a truly nationalist newspaper came into existence. But no picture of the development and influence of the nationalist press in India would be complete without reference to the part played by the *Amrita Bazar Patrika* under its well-known founder Babu Sishir Kumar Ghose and his brother Babu Motilall Ghose, or the *Tribune* in the Punjab, the *Hindu* in Madras, the *Keshari* in Maharastra. The tone of these journals became more and more anti-British and their outlook nationalistic with the spread of education and rousing of the political consciousness of the people, to the growth of which these papers made a direct contribution.

In studying the history of the origin and development of nationalism, it is necessary to bear in mind that the improvement in the general tone of the administration, and the quickening of moral and material progress in the country, on the transference of the Government of India from John Company to the British Crown, represented by the Viceroy in India, the visit of the Prince of Wales and the Imperial Assemblage at Delhi in 1877, had their pacifying effect on the Indian people and for nearly thirty five years, from 1865 to 1900, it was a period of comparative peace and contentment in the land. Apart from the improvement in the tone of the administration, the standard of the public services, the moral and material progress through the development of communications and spread of education, facilities for transport and rise in the prices of agricultural produce also contributed to the establishment of peace and prosperity, producing a feeling of gratitude to Government and appreciation of the blessings of British rule. But this feeling was short-lived.

Representative Government

The first great constitutional change associating Indian public opinion with the legislative measures of Government was introduced by the Indian Councils Act of 1861. This led to the establishment of Legislative Councils in the provinces as well as at the centre with a number of appointed non-official members who were expected to voice the opinion of the people of the country. The officials being in overwhelming majority and the selection of appointed members being largely confined to those who because of their large stake were anxious to avoid any clash with the rulers of the country, non-official members could seldom give free and frank expression to their views unless they were definitely encouraged by officials to do so. Government realised gradually the futility of limiting the choice of appointed non-officials to this class and included in the Councils

Indians whose culture, education and independence enabled them to represent real public opinion and to guard the interests of their countrymen as far as possible in the circumstances against anti-national measures and to advocate legislation for the moral and material progress of the country. But as the legislatures were not yet given power over supplies, the field of activities of these non-official members was extremely limited. The association of a number of non-officials with the legislature enabled Government to be acquainted, to some extent, with the reaction of Indians generally to their legislative and executive actions and made them, especially those occupying the highest position in society, feel that they were being afforded some opportunity of participating in the conduct of affairs of their country. This, however, did not go far to meet the growing Indian claim for the right of influencing governmental measures to the benefit and real advantage of the people of India or of enjoying equality of status and treatment with the British. With the spread of education and increase in the number of those who either were educated in England or on the continent or who visited Europe for knowledge and experience this claim gradually increased in volume. On their return to India, they were in a better position to make a comparative study of the economic and political situation in their own country, and they were greatly dissatisfied with the position in India. Racial discrimination and the aggressive attitude of the members of the ruling race proved daily more unbearable to these cultured Indians. In spite of the generous pronouncement in the Queen's Proclamation, equality of treatment between Indians and Europeans as regards employment in the public services was hardly enforced in practice. Though employed freely in the subordinate judicial, revenue and administrative posts, appointment to the higher civil services still remained an unfulfilled ambition to Indians. The colour bar to such appointments and the increasing exclusiveness of the

members of the European community after the Mutiny became more and more galling to educated Indians. Occasional exhibition of the sense of racial superiority by the British and discourteous treatment even to Indians of high rank, education and culture, gave rise to widespread indignation amongst Indians and was bitterly criticised in the press. This resentment was often powerfully voiced even by some Anglo-Indian journals such as the *Friend of India*. The publication of these incidents and the press criticism of the conduct of the offenders had a great educative value to rulers and ruled alike; while they gave the former an opportunity to rectify their conduct, if they so desired, or to offer explanation, or to punish the offenders, they certainly helped to rouse national consciousness and self-respect in Indians.

Policy of Distrust

The post-Mutiny army policy of the Government of India was undoubtedly more anti-Indian, and British confidence in the loyalty of the Indian soldier was greatly shaken. Vast changes were introduced in the policy of recruitment for the Indian army. Instead of throwing open higher appointments to Indians, fresh restrictions were imposed against Indians attaining the superior rank. No Indian was eligible for the Queen's Commission. Even the Viceroy's Commissions carrying lower pay and status were as a rule denied to Indians except the ranks of jamadar, subadar, and havildar. The Bengal Army that took a prominently hostile part in the Mutiny and which largely consisted of recruits from Behar and the United Provinces was broken up; recruitment of high caste Hindus from these provinces was discouraged. Indians were refused artillery training because of the use made by the mutineers of this branch of armament against their British employers at the siege of Delhi, Lucknow and Cawnpur. The constitution of the regiments was altered so as to make sinister combinations of soliders impossible in future. Most

of the regiments became mixed regiments i.e., consisting of Hindus, Moslems, and different castes and communities. The Punjab became the principal recruiting ground of the Indian army, and this policy continued till the last Great War 1914-18.

Lord Lytton was sent out to India as Viceroy in 1876 by the Conservative Secretary of State for India, Lord Salisbury. The new Viceroy was a reactionary, and his attitude was by no means helpful to Indian aspirations. He was not only determined to follow the post-Mutiny policy of suspicion and discrimination between Indians and Europeans but was inclined to go further by arming his government with new powers in furtherance of this policy. The Afgan War was made an occasion for introducing the Indian Arms Act, depriving Indians of the right to carry arms without license, while Englishmen in this country continued to enjoy the privilege as free citizens of a free country. This policy of disarming Indians originated with the Mutiny, and though the revolution was suppressed and India was pacified, the suspicion remained and fresh legislative weapons were forged to carry out the reactionary policy to perfection regardless of its psychological effect on Indians in all stations of life and on their means of defending their own hearth and home against robbers and dacoits, not to speak of outside invaders. The Vernacular Press Act was passed in 1878 controlling the liberty of the Indian press.

Lord Salisbury's Government also gave another grievance to Indians by reducing the age limit for competition in the Indian Civil Service examination from twenty one to nineteen. As the examination used to be held in London, an Indian student aspiring to enter that service had to go to England before he was sixteen or seventeen. This was a great handicap to him and indirectly denied him the right to compete. The Indian Association founded in Calcutta by Surendra Nath Banerjea to provide a platform for the educated middle class Indians

took up the question in earnest. Surendra Nath Banerjea made an all-India tour on this issue and received a generous response everywhere. This was practically the first attempt to unite India on a political issue.

Indian Nationhood

The ideal of India's cultural unity, though an ancient one, had lost all practical importance from the political point of view in the absence of direct contact amongst different provinces and their people in the past. British rule established this contact in a much greater degree than ever. Facilities of communication, exchange of views through the press, the uniform system of administration and above all the English language were the main unifying factors amongst the different parts of the Indian sub-continent. Moreover, the similar system of education in different provinces cast their minds in the same shape and focussed their attention on some of the common problems. Thus gradually the ideal of Indian nationhood took definite form and became a living force which could galvanise selected leaders in every province into action and encouraged them to work in unison for the social and political advancement of their common motherland. The urge was great, and it ultimately led to the foundation of the Indian National Congress which from small beginnings has now developed into a great political body fighting for the liberty of India.

The forces that helped the establishment of the Indian National Congress had been slowly and imperceptibly at work since the days of Raja Rammohan Roy. It was not a particular incident or a set of events that brought into being this great institution or brought about the national renaissance of India. The introduction and spread of Western education and close contact with the West through her culture and philosophy roused a burning desire in the hearts of a section of Indians to rescue their society from the domination of religious superstitions and social abuses by

encouraging free thinking. The study of the political philosophy of Burke, the history of the Italian freedom movement of Mazzini and Garibaldi, the spirit of intolerance of all restrictions and conventions, produced in young English-educated Indians under the influence of European professors like Derozio and Captain Richardson of the Hindu College of Calcutta in the beginning of the 19th century, the influence of the French philosopher Comte whose positivism made deep and abiding impression on many a brilliant Indian student, the temperance movement started under the aegis of the Brahma Samaj, the Hindu religious revival under the various religious reformers—these jointly contributed to the origin and development of the nationalist movement which culminated in the foundation of the Indian National Congress. The Imperial Assemblage at Delhi in 1877, at which were present the Indian Chiefs and representatives of different tribes and people from all parts of the Indian sub-continent to pay homage to the Viceroy representing the British Crown in India, and the Calcutta International Exhibition held in 1884, also provided inspiration to the authors of the National Congress and supplied them with the idea of holding a conference for social and political discussions on an all-India basis.

Lord Ripon's Contributions

Lord Ripon, the Liberal statesman, succeeded Lord Lytton as Viceroy in 1879. His advent as the head of the Government of India marks a new era in the Indian administration and in the introduction and progress of local self-government in this country. On assuming charge of his high office, he issued a resolution foreshadowing the introduction of the elective system in the district boards and municipalities, giving more popular control over these bodies, and this resolution formed the basis of the Bengal Municipal Act of 1884 and the Bengal Local Self-Government Act 1885. Throughout India similar measures were

adopted giving wider powers to these local bodies and placing them under popular control to a very large extent, though not till 1933 was the constitution of the municipalities in Bengal fully democratised with wider powers. Lord Ripon also publicly announced that the time was fast approaching when even in India popular power would become an irresistible force, and Government would have to be guided by popular views.

Another action of Lord Ripon's Government which greatly contributed to the rousing of popular consciousness and national solidarity is known as the Ilbert Bill. In this Bill, it was proposed to give jurisdiction to Indian Magistrates to try European and American offenders. The Bill was introduced in the Indian Legislative Council by Mr. Ilbert, as he then was, the Law Member. This roused the racial passions of the Anglo-Indian community who took it as a serious encroachment on their privilege to be tried only by European Magistrates, and started an organised campaign against the measure. Almost all Britons and Anglo-Indians in this country supported this move, raised subscriptions and held public meetings of the members of these communities at which Government was bitterly criticised and even personal attacks and insults were hurled at the Viceroy. Defence Associations with branches in different parts of the country were formed. Indian opinion naturally took all this as an attempt to perpetuate racial discrimination in favour of the European community as members of the ruling race, and as a claim to racial superiority on the same ground. Indian popular opinion was very indignant; the agitation further embittered the feelings between the two communities, made Indians more self-conscious and alive to their claim for equality of status and treatment with the British as common citizens of the same country. The Indian public showed their disapproval of, and resentment against, the attitude and conduct of the Anglo-Indian community by public expression of appreciation of the liberal policy of Lord Ripon and

of their gratitude to him. Lord Ripon was accorded a tremendous ovation in Calcutta and throughout his way to Bombay on his retirement. The spontaneity and the magnitude of the demonstration opened the eyes of the most reactionary of British officials and made them realise that Indian popular feeling was no longer to be ignored. Sir Auckland Colvin, the Finance Member of the Governor-General's Council, and afterwards Lieutenant Governor of the United Provinces, speaking of the growth of the popular movement in a pamphlet entitled, "If it be real what does it mean", said: "The dry bones in the open valley have become instinct with life."

The Indian National Congress

This is the atmosphere in which the national movement was born, and these were some of the factors that helped the foundation of the Indian National Congress. So out of evil great good was produced. The first Indian National Conference was held in Calcutta on 28th, 29th and 30th of December, 1883, in the Albert Hall; Surendra Nath Banerjea, Ananda Mohan Bose, Ambica Charan Mazumdar and all the leaders of the early nationalist movement took a prominent part in the conference. There were delegates from most of the great towns, and Mr. A. M. Bose in his opening speech remarked that it was the first stage towards a National Parliament. Representative Councils, general and technical education, separation of the judiciary from the executive in the administration of criminal justice and wider employment of Indians in the public services were some of the subjects discussed. In Madras the Mahajan Sava was started in 1881 and held a provincial conference. In Calcutta, the two important Associations *viz.*, the British Indian Association and the Indian Association, were already functioning. In Bombay, the Bombay Presidency Association was founded on 31st March, 1885 by the famous elders of the nationalist movement in that presidency *viz.*,

Sir Pherozeshah Mehta, K. T. Telang and Badaruddin Tyabiji. While the first National Conference met in Calcutta in December, 1883, a similar conference with the same object was held in Madras with Mr. Allen Hume as Chairman almost at the same time. The second National Conference again met at Calcutta in December, 1885. Delegates from Bombay, Allahabad, Muttra, Meerut and Benares attended this conference. The most important item discussed at the conference was the urgency of reform of the Legislative Councils. When Calcutta was holding her second session of the National Conference, the first meeting of the National Congress was being held in Bombay with the same object and the same procedure. Mr. W. C. Bonerjee was the first Chairman of the Congress.

Lord Ripon retired in 1884, and was succeeded by Lord Dufferin. A diplomat and a statesman of experience, Lord Dufferin soon realised the necessity of being acquainted with the real popular opinion in the country about Government's policy, and he appreciated the usefulness of a body that might give expression to popular views and so act as an indicator of the reaction on public mind of Government's policy as well as of popular demands and aspirations. Allen Hume, a senior member of the Indian Civil Service, had been working for many years even as an official to help the uplift of Indian agriculturists through the spread of education, reduction of debts, and speedy and less expensive justice by the introduction of itinerant courts to try debt cases on the spot. He also worked hard and long for the reform of the police and excise systems. He condemned the raising of excise revenue at the expense of the people's morals. An officer of wide culture, broad sympathies and great foresight, Hume advised the British Government to assert its supremacy. "A free and civilised Government however", said he, "must look for its stability and permanence to the enlightenment of the people and their moral and intellectual capacity to appreciate its blessings."

As early as 1859, Hume started a vernacular paper called *The People's Friends*, and in 1863 pressed for the establishment of a reformatory for correction of juvenile offenders instead of sending them to jail and forcing them into the company of hardened criminals. He conceived the idea that the leaders of Indian public opinion, though public opinion was still in a very weak and nebulous state, should meet and take up the work of social reform in earnest and try to impress on Government and the people the necessity of such reform.

On Lord Dufferin's arrival in India, Hume unfolded his plan to him and received considerable encouragement. But the Viceroy wanted him to go further. Lord Dufferin would like the Indian leaders to take up political questions in earnest and to play the part of His Majesty's Opposition instead of confining their activities merely to social reforms, and his advice was accepted. To quote Mr. W. C. Bonerjee: "It will probably be news to many that the Indian National Congress, as it was originally started and as it has since been carried on, is in reality the work of the Marquis of Dufferin and Ava when that nobleman was the Governor-General of India. Mr. A. O. Hume, C.B., had in 1884 conceived the idea that it would be of great advantage to the country if leading Indian politicians could be brought together once a year to discuss social matters and be upon friendly footing with one another."¹

The National Conferences of 1883 and 1885 of Calcutta and Madras appeared as the National Congress in Bombay, and under the same designation it has now developed into a mighty organisation representing the people of India, and demanding on their behalf not merely reforms of legislatures, adjustments of political rights and privileges or removal of certain discriminatory orders and practices but independence for four hundred millions of the Indian people, getting ready to undergo any sacrifice for their

¹ W. C. Bonerjee's "Introduction to Indian Politics".

political emancipation and becoming increasingly restive under foreign yoke. The Congress now speaks not on behalf of the educated Indians, whom Lord Dufferin towards the closing years of his viceroyalty described as a "mere microscopic minority", but as the mouthpiece of the vast majority of the Indian people in whose hearts echoes every sentiment expressed by this great body, and to whose decision they submit without demur and whose opinions they accept with legitimate pride.

The first meeting of the Congress was held in Bombay on 28th December, 1885. Mr. A. O. Hume, Hon. Mr. S. Subrahmaya Aiyar, the Hon'ble Mr. K. T. Telang who proposed, seconded and supported the election of Mr. W. C. Bonerjee as President, were some of the leading personalities taking a prominent part in the proceedings. Mr. W. C. Bonerjee after alluding to the weighty character of the Congress laid down under four heads the objects of the Congress:—

- “(a) The promotion of personal intimacy and friendship amongst all the more earnest workers in our country's cause in the various parts of the Empire.
- (b) The eradication, by direct, friendly, personal intercourse, of all possible race, creed, or provincial prejudices amongst all lovers of our country and the fuller development and consolidation of those sentiments of national unity that had their origin in our beloved Lord Ripon's ever memorable reign.
- (c) The authoritative record, after this has been carefully elicited by the fullest discussion, of the matured opinions of the educated classes in India on some of the more important and pressing of the social questions of the day.
- (d) The determination of the lines and methods by which during the next twelve months it is

desirable for native politicians to labour in the public interests."

The nine resolutions of the first National Congress mark the beginning of the formulation of India's demand:¹

The first asked for a Royal Commission to enquire into the working of Indian administration.

The second for the abolition of the India Council.

The third dealt with the defects of the Legislative Councils in which then all the members were nominated, and asked for the admission of elected members, for the right of interpellation, for the creation of Councils in the N.W.P. and Oudh and in the Punjab, and for a Standing Committee in the House of Commons to consider formal protests from majorities in the Councils.

The fourth prayed for simultaneous examinations for the I.C.S. and the raising of the age of candidates.

The fifth and sixth dealt with military expenditure.

The seventh protested against the annexation of Upper Burma and the proposed incorporation of it with India.

The eighth ordered the resolutions to be sent to political associations, and they were discussed and passed all over the country by political bodies and public meetings, an admirable plan which has fallen into desuetude; they were carried with enthusiasm, and here and there amended on minor points.

The final resolution fixed the next Congress for Calcutta, on 28th December, 1886.

Stages in the Congress Movement

The history of the Congress movement may be conveniently divided into three periods; the first, from 1885 to 1907, when the first split between the extremist and the conservative sections of the Congress took place at Surat

¹"The History of the Congress" by Dr. Pattabhi Sitaramayya, p. 28.

over the election of the President, the conservatives supporting Dr. Rashbehari Ghose (Sir), who was selected for the Presidentship in that year by the Reception Committee, but the extremists under Bal Gangadhar Tilak, Bepin Chandra Pal and Lala Rajpat Rai supporting Mr. Tilak. The latter at first proposed Lalaji but he refused the honour, so the contest was between Dr. Rashbehari Ghose and Mr. Tilak. But it was really a difference in the political ideology of the two groups rather than over the candidature of the President. This difference continued till 1914. In 1915, in Bombay, the Congress was on its way to reunion and was actually re-united in Lucknow in the following year. From 1915 to 1919 may be taken as the second period, and the third period dates from 1920 to the present day. In 1919, Moderates separated from the Congress leaving it finally in the hands of Extremists and formed their separate organisation, the National Liberal Federation, claiming establishment of full responsible government in India or attainment of Dominion Status through evolutionary process by appealing to the sense of justice and fairness of the British people. Extremists, on the other hand, claimed independence for India and supported the demand by direct action.

The development of the Congress movement, its change in outlook and in the method of enforcing the Congress claims on behalf of the Indian people, had a direct bearing on the origin and development of the separatist tendency of the Moslem community. The Moslems, who as a class did not take much advantage of English education till the beginning of the present century, were generally indifferent to the movement. Sir Sayed Ahmed, the great Moslem leader and founder of the Aligarh Anglo-Mahammedan College, was the first to realise the importance of English education; but instead of encouraging Moslems to identify themselves with the Congress movement, he founded a separate organisation, called the Patriotic Association, for the members of his

own community. This organisation, however, did not survive long, and some prominent Moslems joined the Congress. But the spread of English education and development of their political consciousness led to the demand for separate electorates and foundation of a separate organisation known as the Moslem League, and only occasionally Moslems displayed real enthusiasm for nationalism such as during the Khilafat movement in 1918-1922. From 1922 onward the Congress drifted towards extremism and direct action; this resulted in the gradual estrangement of Moslems and the strengthening of the Moslem League as a separate organisation of that community. In order to understand and fully appreciate the trend of the Indian political movement and the attitude of Moslems thereto, it is necessary to describe in some detail the forces that had been at work and the environment in which Moslems were living and the events that influenced their outlook, and this will be done in a subsequent chapter.

It may be noted that the abolition of the India Council, simultaneous I.C.S. examination in India and England, equitable apportionment of military expenditure between Indian and England, extension of trial by jury, separation of judicial and executive functions of the magistracy, amendment of the Indian Arms Act, reform of the land revenue policy, were some of the resolutions that were adopted by the Congress between 1885 and 1915. The very nature of the subject matter of the resolutions shows that during the first 30 years the Congress paid more attention to the removal of grievances owing to defects in the machinery of administration and devoted itself to minor reforms in the fiscal and economic policy of Government. Similarly, in constitutional matters the Congress was mainly concerned in securing rights of a limited nature and did not yet claim freedom for the people of India or complete control over the executive or legislative machinery of Government on behalf of the nation. The ideal of adult

franchise, even as the ultimate goal, attainment of Dominion Status as an immediate objective, all this did not yet come to the forefront, though in the speeches of some of the leaders of the Congress the ideal of India being conceded the same political rights and privileges as the Crown Colonies or the Dominion of Canada was being foreshadowed from time to time.

The authors of the Congress movement had great love for British parliamentary institutions, and an abiding faith in the British sense of justice and fairness. They very sincerely believed in the constitutional movement and expected to receive freedom through constitutional means. On his election to Parliament in 1893 as Member for Finsbury, Dadabhai Naoroji received several addresses of felicitation, and in reply to one of them he said: "We hope to enjoy the same freedom, the same strong institutions which you in this country enjoy. We claim them as our birth-right as British subjects. We are either British subjects or British slaves. If we are really British subjects, you are honestly bound to give us every one of your institutions as soon as we are prepared to receive them. I have now no doubt from my long knowledge of this country that as soon as the British people begin to understand what we are prepared for, they will be ready to give it."¹ Speaking as early as in 1886 in the second session of the Congress in Calcutta, Surendra Nath Banerjea said: "Self-government is the ordering of Nature, the will of Divine Providence." "Every Nation", he said, "must be the arbiter of its own destinies; such is the omnipotent fiat inscribed by Nature with her own hands and in her own book." Presiding over the twentieth session of Congress, Sir Henry Cotton visualised the ideal of "a Federation of free and separate States, the United States of India." Dadabhai Naoroji in 1906 spoke of "self-government or Swaraj like that of the United Kingdom or the

¹ "Dadabhai Naoroji" by R. P. Masani, p. 284.

Colonies". The mental attitude and outlook of the authors of the Congress movement is clearly indicated in the address by Surendra Nath Banerjea in 1887 in England to a meeting of the Oxford Union. He said: "England is the home of representative institutions which have spread far and wide until this country has justly been called the august mother of free nations. The people of India are children of that mother, and they claim their birthright, they claim to be admitted into the rights of British citizens and British fellow-subjects. I am perfectly certain that such an appeal made to the English people can meet with but one response—a response of sympathy, and a readiness to grant it. (Cheers) I plead before this House for justice; I plead for liberty not inconsistent with the British connexion, but tending to consolidate its foundations; and I am perfectly convinced that, so long as these words, these sacred words, have any weight, any meaning, any signification, amongst Englishmen, and in this House, you will record, by an unanimous vote, an emphatic vote, your sympathy with our aspirations, our desire that India should be governed according to those eternal principles of justice and liberty, which are engraved deep in the hearts, the convictions, and feelings of Englishmen, to whatever party, to whatever creed, to whatever sect they might belong."¹

The days of direct action were still far off, and the feeling of political leaders was not yet soured by repression and disappointment. The people of India were then just beginning to appreciate the value of local self-government. It was only the resolution of Lord Ripon's Government that foreshadowed a more liberal policy regarding local bodies and their gradual democratisation though still in a very limited sense of the expression. The right of electing some representatives to the district boards and municipalities, and of selected municipalities to elect their own chairmen from their own members was conceded for the

¹"A Nation in Making" by Sir Surendranath Banerjea, pp. 116-117.

first time in 1885. These rights were greatly appreciated and taken full advantage of by the educated community. Lord Dufferin encouraged the Congress by receiving a deputation on its behalf in the second year of the Congress session in Calcutta in 1886. Public opinion for reforming the legislatures became more and more insistent, and it began to be voiced in the press and on the platform including that of the newly formed Congress. Addresses were presented to Lord Dufferin by the municipalities of Bengal on the occasion of the silver jubilee of the reign of Queen Victoria. In these addresses the Indian aspiration for the introduction of representative institutions in the country was widely voiced. The Viceroy in one of his replies said: "Glad and happy should I be, if during my sojourn among them (the people of India), circumstances permitted me to extend, and to place upon a wide and more logical footing, the political status which was so wisely given, a generation ago, by that great statesman, Lord Halifax, to such Indian gentlemen as by their influence, their acquirements, and the confidence they inspired in their fellow-countrymen, were marked out as useful adjuncts to our Legislative Councils."¹

Constitutional Reforms

Lord Dufferin towards the latter part of his viceroyalty became critical of the Congress policy and did not maintain the same friendly feeling towards the Indian national movement, but in his dispatch to the Secretary of State for India he recommended concession to public opinion in India which was rapidly gaining momentum. Lord Dufferin observed²:—

"I do not mean that votes should be taken in regard to the various items of the Budget, or that the heads of expenditure should be submitted in detail for the

¹ "A Nation in Making" by Sir Surendranath Banerjea, p. 92.

² "Speeches and documents on Indian Policy", Vol. II, 1858-1921 edited by Prof. A. B. Keith, p. 51.

examination of the Council, but simply that an opportunity should be given for a full, free, and thorough criticism and examination of the financial policy of the Government. Some such change as this would, I think, be as beneficial to the Indian administration as it would be in accordance with the wishes of the European and native mercantile world of India. At present, the Government is exposed to every kind of misapprehension and misrepresentation in regard to its figures and the statement of their results. Were the matter to be gone into thoroughly and exhaustively on the occasion I suggest by independent critics, who, however anxious to detect a flaw and prove the Government wrong, would be masters of their subject and cognizant of the intricacies of Indian administration, the result would be more advantageous to the financial reputation of the Indian Government, as well as more conducive to improve her financial system, than the perfunctory debates of the House of Commons, and the imperfect criticism of Indian finance by some English newspapers." The India Council Act of 1892 was based on the recommendations of Lord Dufferin. George Nathaniel Curzon, the future Viceroy of India, as Under-Secretary of State for India, introduced the Bill in the House of Commons on 28th March, 1892, to amend the Government of India Act of 1861. In moving this measure, he said: "The object of this Bill which it is my duty to explain to the House is to widen the basis and to expand the functions of the Government of India; to give further opportunities than at present exist to the non-official and native elements in Indian society to take part in the work of Government and in this way to lend official recognition to the remarkable development both of political interest and political capacity which has been visible among the higher classes of Indian society since the Government of India was taken over by the Crown in 1858."

The Act of 1861 constituted three Legislative Councils in India *viz.*, the Supreme Legislative Council and those

of the Governors of Madras and Bombay. The Under-Secretary of State for India said: "The system has undoubtedly worked well. It has justified itself and the anticipations of its promoters operating to a very large extent through the agency of special committees, composed of experienced persons, it has proved to be an efficient instrument for evolution of laws. The publicity which attended every stage of its proceedings has had a good effect. A number of native gentlemen of intelligence, capacity and public spirit have been persuaded to come forward and lend their services to the functions of Government, and undoubtedly the standard of merit in these Legislative Councils has stood high. Indeed, I would venture to say that few better legislative machines, with regard to their particular object, for which they were constructed, are anywhere in existence, nor can better legislation produced by such bodies, be found in any other country." It cannot, however, be denied that the legislatures under the Act of 1861 functioned within a very limited scope. They only met to discuss the legislation placed before them and were not permitted to travel outside that very circumscribed radius. No discussion on financial matters was allowed unless there was a proposal for new taxation, and the discussion had to be confined to the particular measure of taxation before the House. There was no right of interpellation. In the circumstances, Government felt greatly handicapped by the absence of opportunity of explaining their policy or replying to hostile criticisms. Non-official members, who naturally considered themselves as guardians of the public interest, also felt that they had no right to ask for information on matters in which the public were interested nor could they acquaint themselves with the general policy of Government on administrative questions affecting the people. The legislatures were deliberative bodies within a very limited scope, and they were in no sense parliamentary bodies, in which the people of the country were represented. The

utmost that could be said about these legislatures was that some intelligent Indians who found place in these bodies through Government nominations tried, within a very narrow scope and subject to their limitations as appointed members, to reflect, to the best of their ability, the trend of opinion of the small educated community to which they belonged and with which they were naturally in close contact. But they had no claim to speak on behalf of the Indian masses who were supposed to be dumb and whose voices never found any expression in the legislative chambers of the country. Persons who often assumed the role of spokesmen of the millions of agriculturists of the country were members of the Indian Civil Service, serving on the legislatures as nominated officials. It must be admitted that unless Government or British interests were directly involved, these officials often tried to safeguard the rights and privileges of the masses and to secure fresh rights for them. The instinctive sympathy of the British for the helpless and down-trodden, their love of freedom, and natural revulsion against acts of injustice especially when the man wronged is poor and cannot defend himself occasionally inspired these officials to befriend the neglected agricultural population of India. There are many instances when members of the Indian Civil Service were directly instrumental in introducing measures to give relief to the masses. The Bengal Tenancy Act, the raiyatwari settlements in Madras and Bombay, and the measures adopted by Government to check the oppression of agriculturists by indigo planters in the sixties of the last century, though mostly ineffective and inadequate, were a few instances of official benevolence and efforts to extend protection to those who stood greatly in need of such protection.

The British Committee of the Indian National Congress formed in London with a view to influence British public opinion in favour of Indian aspirations and

to bring to the notice of Parliament grievances of the Indian people, whether general or particular, within a reasonable time, pressed for the passing of the Indian Councils Bill of 1892 without delay and protested against its previous withdrawal from Parliament. The Committee was able to enlist the support of such eminent M.P.s and British statesmen as John Bright and Gladstone, who never hesitated to champion the cause of the weak and oppressed and always advocated the extension and introduction of Parliamentary democracy in the countries within the British Empire. Amongst other Britons who took an active interest in the Indian cause the names of Fauceit, Bradlaugh, Allen Hume, Sir Henry Cotton, Sir William Wedderburn, George Yule may be mentioned. This Committee played an important part in pleading the cause of Indian nationalism before the British public, and its timely intercession on many a question proved of great benefit to India. This Committee insisted that the India Bill should be proceeded with, and Lord Salisbury's Government was wise enough to listen to its advice.

The Act of 1892 brought about three main changes viz., (1) extension of the right of criticism in financial matters both in the supreme and in the provincial councils, (2) the privilege of interpellation or the right of asking questions, (3) an addition to the number of members in all councils. As already pointed out, under the Government of India Act of 1861 financial discussion was permissible only when a new tax was proposed. At other times, the budget was circulated in the form of a pamphlet, and no discussion could take place upon it. During the thirty years from 1861 to 1892, there were 16 taxation proposals, and only on those occasions had discussions taken place. The Act of 1892 conferred on members of the Council the privilege of discussing the budget every year. But the right was still confined to a general discussion of the budget; there was no right of voting on the budget items. The Act

merely conceded the right of a general criticism of the financial proposals and financial policy of Government. It afforded Government the opportunity of answering criticisms in justification of their financial policy and of profiting from the scrutiny of the budget by non-official members who were expected to voice popular opinion. The right of asking questions was subject to the restrictions of the rules framed by the Governor-General and provincial Governors. The consideration that mainly weighed with Government in conceding this right of asking questions was to afford Government an opportunity to answer criticisms or animadversions which they were powerless to remove as they had no occasion to reply to them and to silence calumny circulated against Government, often based on lack of information, since the public had to depend on rumours or unauthentic information. The addition of members was prompted by the consideration that it would increase the representative character of a legislature and widen the area of selection of members affording opportunities to the larger number of public bodies to be represented on the legislature as well as to the increasing number of Indians willing to offer co-operation to Government and to serve their country in the legislature. The system of representation introduced by this Act involved selection rather than direct election. Local bodies, associations of zemindars, universities, the municipalities of great cities, the British Indian Association and the Chambers of Commerce were conceded the right of electing their representatives, and Government reserved the right of appointing those selected or elected. Mr. George Nathaniel Curzon in explaining the provisions of the Government of India Bill in the House of Commons said: "Under this Act it would be in the power of the Viceroy to invite representative bodies in India to elect or select or delegate representatives of themselves and of their opinions to be nominated to those Houses." It will be interesting to note the opinion and attitude of Her Majesty's Government

regarding the introduction of representative elected legislatures in India towards the end of the nineteenth century. The Under-Secretary of State in opposing a proposal for the introduction of direct election of popular representatives to the legislatures, and in support of the Government Bill, said: "But I am well aware that the proposals may not altogether suit those Hon'ble Members on the other side, whose ideas of political progress have been formed in the breathless atmosphere of life in the West, and who are perhaps unable to accommodate their pace to the slow movement of life in the East."¹ In criticising the amendment moved by Mr. Schwaner with the object of introducing the system of direct election in the Bill instead of appointment by Government of the members elected or selected by the public bodies, the Under-Secretary of State said:² "No system of representation that has ever been devised, no system of representation that the ingenuity of the Hon. member can suggest, no system of representation that would stand the test of twenty-four hours' operation, would, in the most infinitesimal degree, represent the people of India. Who are the people of India? The people of India are the voiceless millions who can neither read nor write their own tongues, who have no knowledge whatever of English, who are not perhaps universally aware of the fact that the English are in their country as rulers. The people of India are the ryots and the peasants, whose life is not one of political aspiration, but of mute penury and toil. The plans and policy of the Congress Party in India would leave this vast amorphous residuum absolutely untouched. I do not desire to speak in any other than terms of respect of the Congress Party of India. That party contains a number of intelligent, liberal-minded, and public-spirited men, who undoubtedly represent that portion of the Indian people

¹ George Nathaniel Curzon's Speech, House of Commons, 28th March, 1892.

² Speeches and Documents on Indian Policy, Vol. II, 1858-1921, Prof. A. B. Keith, pp. 63-64.

which has profited by the educational advantages placed at their doors, and which is more or less imbued with European ideas; but as to their relationship to the people of India, the constituency which the Congress Party represents cannot be described as otherwise than a minute and almost microscopic minority of the total population of India." In this connection he added:—"It appears to me that you can as little judge of the feelings and aspirations of the people of India from the plans and proposals of the Congress Party as you can judge of the physical configuration of a country which is wrapped up in the mists of early morning, but a few of whose topmost peaks have been touched by the rising sun. To propose an elaborate system of representation for a people in this stage of development would appear to me to be, in the highest degree, premature and unwise. To describe such a system as representation of the people of India would be little better than a farce. The Government assume the responsibility of stating that, in their opinion, the time has not come when representative institutions, as we understand the term, can be extended to India. The idea of representation is alien to the Indian mind. We have only arrived at it by slow degree ourselves, through centuries of conflict and storm. Nay, it may be said that it is only within the last twenty-five years that we have in this country entered into anything like its full fruition. No doubt we are apt to regard popular representation as the highest expression of political equality and political freedom; but it does not necessarily so present itself to those who have no instinctive sense of what political equality is. How can you predicate political equality of a community that is sundered into irreconcilable camps—('No!')—into irreconcilable camps by differences of caste, of religion, of custom, which hold men fast-bound during their life-time, and the rigour of which is not abated even beyond the grave? I notice that the Hon. member has altered the terms of amendment as it was originally placed upon the paper. At first, he spoke of the elective

principle as defined at the meetings of the Indian National Congress. But those words are now omitted. I think that is a prudent omission. For the truth is that the Indian Congress is not of one mind, and does not speak with one voice on this matter."

This was the attitude of Her Majesty's Government and of the British people except a handful of selected statesmen and politicians who were anxious to accelerate the pace of India's political progress and to expedite the introduction of Parliamentary institutions in this country. Curzon himself admitted that "the Bill is not perhaps a great heroic measure, but at the same time it does mark a decisive step and a step in advance."

The leaders of the Congress were evidently satisfied with the reforms and decided to take full advantage of the measure to safeguard the rights and privileges of the people and to ventilate their legitimate grievances for the education of the people in a parliamentary system and also to utilise it for further concessions. The system worked for nearly 16 years, and during that period the country made rapid progress towards political consciousness. The opportunities offered by the Government of India brought into the sphere of legislative activities in the country such eminent workers as Surendra Nath Banerjea, Rash Behari Ghose, Ashutosh Mukherji, Ambica Charan Mazumdar, Ananda Mohan Bose, Bhupendra Nath Basu and others in Bengal, Ananda Charlu, S. Subrahmanya Aiyer, N. Subharao Pantalu, Sankaran Nair, C. Vijaraghavachariya, P. S. Sivaswami Iyer in Madras, N. Chandavarkar, Gokhale, Dinshaw Wacha, Pherozshah Mehta in Bombay, Pandit Madan Mohan Malaviya, Ajodhyanath Kunzru in the United Provinces, R. N. Mudholkar, Bal Gangadhar Chitnavis in the Central Provinces. They were some of the finest products of English education. They drank deep in the culture and philosophy of the West; they had a firm faith in British justice and fairness, largely justified by the establishment of law and order at the end of a long period

of disorder and misrule in the country that followed the dismemberment of the Mogul Empire and preceded the establishment and consolidation of British rule. The establishment of educational institutions by Government for the spread of education, however limited in number, recognition of the right of individual citizens to live and carry on their vocations unmolested by the rich and powerful, a better and more purified system of judicial administration based upon principles of British jurisprudence, and the enunciation of high moral principles for governance of the country, guaranteeing religious freedom of individual citizens, in the Queen's Proclamation, helped the growth of the confidence of the people in the justice and fairness of the British. The granting of the right of representation in the legislatures to a small section of the people made a direct appeal to the sentiments of the educated people, it fired the imagination of those who were in a position to realise the value of this concession and were able to speak on behalf of the millions of their countrymen steeped in poverty and ignorance. As an instance of the faith of this section in the sense of fairness of British rulers, the opinion of a representative leader like Dadabhai Naoroji, who had been for over two generations in the vanguard of the national movement and was twice honoured by his countrymen with the highest position in their possession viz.,—Presidentship of the Indian National Congress, may be quoted below¹:—

“Our faith and our future are in our own hands. If we are true to ourselves and to our country and make all the necessary sacrifices for our elevation and amelioration, I for one have not the shadow of a doubt that in dealing with such justice-loving, fair-minded people as the British, we may rest fully assured that we shall not work in vain. It is this conviction which has supported me against all

¹ Dadabhai Naoroji's presidential address at the Congress in Calcutta, 1906.

difficulties. I have never faltered in my faith in the British character and have always believed that the time will come when the sentiments of the British nation and our gracious Sovereign proclaimed to us in our great charter of the Proclamation of 1858 will be realized, viz. "in their prosperity will be our strength; in their contentment our best reward."

This was the faith that animated a large number of his countrymen for two generations. They strove to achieve the political advancement of India under the aegis of British rule through British Parliamentary institutions and with the help and co-operation of England, nay under her guidance. This attitude continued till 1907—the second period of the Indian national movement. India settled down to work the expanded legislatures brought into being by the Indian Councils Act of 1892 and felt satisfied with the reforms. In 1892 the Congress accepted them in a loyal spirit, although it expressed regret that the Act itself did not in terms concede to the people the right of electing their own representatives to the councils. In 1893, the Congress thanked Government for its liberal spirit in giving effect to the Act, but made certain suggestions for modifications in order to work the Act in its proper spirit. The Congress also pressed for the establishment of a Legislative Council in the Punjab. But things did not remain entirely peaceful for very long.

Birth of Extremism

Southern India was visited with a severe famine, and this was followed by the outbreak of bubonic plague. The nation was smitten with a great calamity. Almost all the provinces in India were affected by this pestilence. The Government of Lord Elgin adopted certain preventive measures, and officers were invested with special powers of interference with the free movement of people. They had to submit to medical examination at different centres. Officers and even underlings of the special department, set

up to deal with the menace, entered the houses of citizens in the great cities as well as in the countryside in search of patients with a view to segregate them and disinfect the houses. It was an extraordinary situation, the like of which neither the people nor Government had had to face before. The whole population was panic-stricken and excited. There was no public health department, no medical organisation with the experience of a situation like this. Government depended on their own resources and neither claimed nor received help from the public in their difficult and unpleasant duty. There were no social service organisations to co-operate with Government in their work. There was no public opinion in the villages vigilant enough to report or check abuses by the agents of Government or in any way allay the panic. The people were subjected to terrible sufferings in certain areas. The separation of families from one another during such calamities by the orders of authorities, interference with the sanctity of homes by the officers and peons of the anti-plague organisation, forced segregation of wife from husband or of daughters from parents, roused popular resentment; the whole country was in a ferment. The atmosphere was surcharged with suspicion and anti-British feeling. Government had no machinery or means at their command to reach the people directly or to soothe their feelings. They depended on their executive powers and tried to coerce people to obedience instead of pacifying them by removing the causes of discontent or enquiring into their grievances, part of which was no doubt imaginary. The excitement culminated in the assassination of Mr. Rand, President of the Plague Committee, and Lieut. Ayerst at Poona. Government resorted to gagging the press and the deportation of the Natu brothers, two respectable and well-to-do citizens, whose family had rendered loyal services to Government in the past. The obsolete Regulation (Reg. XXV of 1827) was brought out of the armoury, and the two brothers were

deported without trial. This was the first signal of extremism in the country and of Government's attempt to check it by extraordinary measures.

The prosecution of Mr. Bal Gangadhar Tilak for sedition in 1898, his transportation in 1908, the transportation of Babus Aswini Kumar Dutt, Krishna Kumar Mitter, Syam Sunder Chakravarti and others from Bengal under Reg. III of 1818 and of Lala Lajpat Rai and Sardar Ajit Singh from the Punjab were some of the incidents between 1898 and 1907. This was the formative period of extremism in Indian politics, and the factors that contributed to this change in the outlook of the people who were hitherto quite contented and loyal are worth while analysing. There was apparent calm between 1900 and 1905. Lord Curzon came out to India as Viceroy towards the end of 1899. Many useful administrative changes, some of them of very far-reaching consequence, were made by him. There was practically no department of Government which he did not try to overhaul. He was responsible for the creation of several new departments, such as those of Commerce, Archaeology, Agriculture, Posts and Telegraphs etc. He pursued a forward frontier policy and sent a military mission to Tibet. India is grateful to him for the preservation of ancient monuments. But he will be remembered and criticised in this country chiefly for his educational policy and partition of Bengal, which are considered as very short-sighted acts by which he forfeited the good opinion of India and alienated a loyal and contented people, to their great suffering and to the detriment of his own country.

Queen Victoria died in 1899. The whole country was plunged into grief. Indians felt it as a personal loss, and a wave of loyalty and demonstration of sorrow passed over the country. It was a matter of deep regret that in six years this feeling was transformed into one of extreme hatred at least amongst a section of our young men, though fortunately the number was very small, leading to overt

acts of violence against the officers of Government, and to a general sense of frustration amongst our public men and leaders, the Bible of whose political creed had been the Queen's Proclamation and who cherished an almost unshakable confidence in the sense of justice and fairness of the British people.

One of the first important acts of Lord Curzon as Viceroy was to take up the modification of university education. In 1901, he called an education conference at Simla to which only European educationists were invited. The proceedings of the conference never saw the light of day. The conference was followed by the appointment of a Universities' Commission which, when its personnel was first announced, did not include a single Hindu member, though Hindus had the largest interest in the educational problems to be considered. There was a serious protest in the press, and Mr. Justice Gurudas Banerjee was subsequently added as a member of the Commission. The report was submitted in less than five months. It recommended (1) the abolition of second grade colleges and law classes, (2) the fixing of minimum rate of college fees by the Syndicate which really meant the raising of the fees. In order to raise the standard of efficiency, the scope of high education was to be restricted, at least that was the interpretation of a large section of Indians who were interested in education. Lord Curzon felt that there was laxity in the affiliation of schools and colleges to the universities, and there was a "tendency sometimes to increase the number of the affiliated institutions without due regard to the character of the teachers, the quality of training, or the degree of discipline." With a view to remove what Lord Curzon considered laxity and lack of discipline, he decided to tighten Government control on education, and in his convocation address as Chancellor of the Calcutta University in February, 1900, he expressed his opinion as follows¹:—

¹ "India under Lord Curzon and After", By Lovet Fraser, p. 183.

“To call upon the State to pay for education out of the public funds, but to divest itself of responsibility for their proper allocation to the purposes which the State had in view in giving them, is to ignore the elementary obligations for which the State itself exists. My desire, therefore, is to revindicate on behalf of the State and its various provincial agents that responsibility which there has been a tendency to abdicate, and to show to the world that our educational system in India, liberal and elastic as I would have it remain, is yet not free to assume any promiscuous shape that accident or intention may force upon it, but must conform to a scientific and orderly scheme, for which in the last resort the Supreme Government should be held accountable, whether it be for praise or for blame.” In a memorable speech in opening the conference at Simla in September 1900, Lord Curzon outlined his policy about educational reforms and criticised the existing system. The Commission submitted its recommendations which were published in October, 1902. Educated India almost with one voice protested against the proposals and apprehended that Senates and Syndicates were going to be “affiliated” and the universities were going to be converted “practically into Government Departments”. Sir Pherozshah Mehta, Sir Surendra Nath Banerjea and Mr. Gokhale were the leaders of the opposition to the proposed reforms. Meetings were held all over the country. Resolutions opposing and criticising the recommendations of the Commission were adopted at the next session of the Congress held at Poona, presided over by Surendra Nath Banerjea. But Lord Curzon proceeded with his Universities Bill, and it became an Act in 1904. There were small concessions to public opinion. In the light of actual working of the measure and conversion of some of the universities to teaching bodies from merely affiliating and examining bodies, it may be said at this distance of time that the criticisms were mostly unmerited and that Indian education has benefitted rather than suffered from the reforms. It cannot be denied,

however, that popular opinion was greatly roused at the time against the measure, and it was sincerely felt by a large section of the people in this country that the object of the reforms was more political than educational, and that Lord Curzon wanted to control and curtail the scope of high education with a political motive. Referring to this apprehension in the mind of educated India Lovet Fraser in his book, "India Under Lord Curzon", says: "The idea was a ludicrous travesty of his real intentions, but it was seriously entertained and did much to stimulate opposition to the Universities Bill. Educated Indians sincerely thought that the Viceroy meant to deal a blow at the university system, and many of them were never able to understand from the first to the last that his sole object was to make it more efficient."

Partition of Bengal

Another act of Lord Curzon which outraged the feelings of Hindu Bengal and created a deep sense of resentment amongst them and ultimately forced a large number of our young men into active hostility to the British was the partition of Bengal. It may be taken as the turning point in the history of the Indian national movement for more reasons than one. Lord Morley put the case in the following way.¹—"The old system had never been worked with loftier and more beneficent purpose or with a more powerful arm than by the genius and indomitable labour of Lord Curzon. Yet we were told by leading moderates that even the general loyalty had been chilled by his declared policy of centralisation; by his whittling away, as they called it, of the liberal principles and promises of Queen Victoria's proclamation of 1858; by too openly expressed contempt for Indian standards of morality; and by measures, like the partition of Bengal,

¹ "Recollections" by Viscount Morley, Vol. II, p. 155.

carried out against the strong wishes of the people concerned."

Bengal, Behar and Orissa formed one province from the time of the Moguls. The total population was about seventy millions. Assam was a small frontier province under a Chief Commissioner. With the increasing complexities of administrative problems, the Lieutenant-Governor of Bengal found it progressively difficult to rule the province or to pay proper and adequate attention to all the questions affecting the welfare of the people in his charge. It was with considerable difficulty that he could manage to pay one visit in his five year term of office even to the important places within his jurisdiction, not to speak of visiting the outlying places within the province or of becoming familiar with their problems by acquiring local knowledge and experience. The genesis of the partition of Bengal was, therefore, purely the administrative necessity of relieving the Lieutenant-Governor of a portion of his burdens. Facts disclosed in later years show that the idea of recasting the map of Bengal originated with a proposal to transfer Orissa to the Central Provinces. Assam required a port, and the suggestion of transferring Chittagong to Assam was also one of the ideas at the bottom of the scheme. These proposals were investigated in detail on official files, and the idea of transferring Orissa from Bengal to the Central Provinces and in the alternative of forming Orissa into a separate province under a Chief Commissioner was dropped in 1902. The scheme of the partition of Bengal, however, was revived at the instance of Sir Andrew Fraser who became Lieutenant-Governor of Bengal in 1902, on the ground that the administration of the districts of Dacca and Mymensingh was exceedingly defective and that Eastern Bengal needed more immediate personal contact with the higher authorities. It was, therefore, proposed to attach these districts as well as the division of Chittagong to Assam. The scheme was made public in 1903. Hindu

public opinion in Bengal strongly disapproved of the idea from the very beginning. Lord Curzon undertook a tour in the Eastern Bengal districts, discussed the matter with the leaders of popular opinion and tried to explain the project and point out its advantages in his replies to the various addresses of welcome from the public. Referring to the people of Dacca where placards saying "Do not turn us into Assamese" were exhibited on the occasion of the viceregal visit, Lord Curzon said "that they must be the head and heart of any new organism, instead of the extremities."

The opponents of the scheme remained unconvinced, and an announcement of the partition of Bengal on 16th of October, 1905, was taken by them as a great insult to public opinion and a deliberate attempt to divide the Bengali speaking people of the province, to undermine their solidarity and to weaken them politically. The partition, in its final form, with the Rajshahi division transferred to the newly formed province of East Bengal and Assam made it still more objectionable from the Hindu point of view as it placed the Hindus in the new province in a position of numerical inferiority to the Moslems, and this was interpreted as a move to create a Moslem province in which Moslems would have the opportunity of controlling affairs to their advantage and to the detriment of Hindus. "The British public have frequently been invited to believe" says Lovet Fraser in his vindication of Lord Curzon's action "by people who ought to have known better, that Lord Curzon in some spirit of malignancy or in pursuance of some purely imaginary spite, deliberately set himself to anger the Bengali Hindus by dividing up a Province of which they formed part." "We are to conceive him" continues the author "as weaving a subtle web for their discomfiture and as stealthily scheming to create a new Mahomedan Province which could be fitted against the Hindus of old Bengal while their brethren in East Bengal were left under the

subjection of Islam." This was exactly the apprehension of Hindu Bengal, and that feeling was largely justified by subsequent political developments in the newly created province. Hindus and Moslems there became divided into hostile camps, one opposing the partition as a national calamity and an affront to public opinion and the other welcoming the partition and sympathising with the authorities in their attempt to check all anti-partition meetings and demonstrations. The Nawab of Dacca led the Moslems in this pro-partition campaign, and this marked the beginning of the Hindu-Moslem quarrel which has now unfortunately become a normal feature of our political life in this province and practically all over India. The anti-partition agitation, organised by Surendra Nath Banerjea, brought into politics a large section of the student community, and they formed the bulk of the national army to fight the political battle on behalf of the country. The boycott of British goods as a political weapon was resorted to for the first time. Bonfires of British goods and entreaties and insults by the student community to dissuade people from using such goods became a regular means of enforcing the boycott. Meetings were organised and held throughout the length and breadth of the province to agitate against the partition and to preach boycott of British goods. Government tried to suppress these meetings by arresting their organisers and prosecuting people for singing 'Bande Mātaram' which came to be regarded by the authorities as definitely anti-Government and was soon accepted as the national anthem by people not only in Bengal but throughout India. The suppression of meetings resulted in an open clash between the authorities and the people on certain occasions, though the attitude of the latter was still non-violent and their resentment against Government action or orders was given expression to by violation of those orders. The breaking up of the Barisal Conference by police assault of some of the delegates and prosecution of Surendra Nath

Banerjea while he was leading a procession in Barisal town on the occasion are some of the instances that exasperated public feeling, helped the agitation to gain in popularity and momentum, and contributed to the creation of an atmosphere in the country in which extremism was born and nourished in spite of the leaders of the national movement who wanted it to proceed on purely constitutional lines. The new Government of East Bengal and Assam was faced with a difficult and awkward situation. Hindu public opinion in the newly created province was hostile to the Administration; the student community was in a highly excitable mood and was resorting to strikes as a protest against the Government circular prohibiting students from taking part in political demonstrations. The "Bande Mataram" song, sung by Hindus, was in direct violation of Government orders; anti-partition meetings were being held throughout the province at which Government were being openly attacked and criticised for their unsympathetic policy towards the national movement. Allegations of unfair treatment of Hindus, who were supposed to be anti-Government, and of undue partiality to Moslems because of their pro-partition attitude were openly made at these meetings. The boycott of British goods was being openly preached; burning them in public places, by way of protest against the partition, became a normal incident. Government employed Gurkha armed forces to maintain the peace and uphold the authority of Government. There were instances of assaults on the villagers by these Gurkhas, and allegations of women being molested by them were publicly made, and such reports ran like wild fire throughout Bengal. The whole Hindu community felt greatly concerned in these allegations, and public feeling was roused in the country. Young men lost their balance, and a number of them prepared themselves to take vengeance on the officials who were supposed to be responsible for these alleged acts of assaults and insults. Surendra Nath Banerjea narrates

an incident in his reminiscences "A Nation in Making" which gives a typical picture of how the Hindu youths of Bengal were converted into terrorists by the repressive policy of Government.¹ To quote his own words, the incident was as follows:—"One evening a few months after the Barisal affair, two young men called at my residence at Barrackpore and wanted to have a private interview with me. As I entered the room and took my seat, they said that it was an exceedingly delicate and difficult matter, and they wanted the doors to be closed. Three of us were now closeted in the room, and one of the young men who, it appeared, was a medical student, began the conversation. He said, 'We have come to ask your advice upon a matter of the utmost importance. We have formed a plan to shoot Sir Bampfylde Fuller; and we are going to—to-night for this purpose. What do you say about it?' Not being prepared for it, and the proposal being so unusual, I was a little staggered. I said, 'Why do you want to shoot Sir Bampfylde Fuller? What has he done?' The young man replied with evident emotion, 'His Gurkhas stationed at Banaripara have been outraging some of our women, and we want to take revenge upon him.' "I said" continued Sir Surendra Nath Banerjea "You are bound to be caught and hanged." They said, "We will take our chance and if need be suffer for the honour of our women."

Within a year, there were several acts of terrorism by Bengali youths beginning with the assassination of two innocent European ladies, Mrs. and Miss Kennedy, at Muzaffarpur. The bomb that killed these two ladies was meant for Mr. Kingsford, the ex-Chief Presidency Magistrate of Calcutta, in which capacity he had passed deterrent sentences on several persons tried for sedition in connection with the anti-partition agitation. He was then District and Sessions Judge of Muzaffarpur. The police soon detected a big terrorist conspiracy in Bengal and committed

¹ "A Nation in Making" by Surendra Nath Banerjea, pp. 233-34.

the persons arrested for trial. This was known as the Alipur Conspiracy case. A large number of Bengalis were implicated in the conspiracy including Mr. Arobindo Ghose and his brother Mr. Barindra Kumar Ghose. The trial ended in transportation for life of some of the accused.

The year 1908 marked the beginning of a long spell of terrorism in Bengal and also in the Punjab on a smaller scale. The Alipur Bomb case was the first of the series of trials that continued in Bengal for several years and in which a large number of our young men were involved. The history of the terrorist movement in Bengal may be divided into four periods in which it flared up with intervals in each phase. The first period from 1907 to 1911 ended with the modification of the partition of Bengal and the King-Emperor's visit in 1911. The next period was from 1914 to 1919. The Great War led to the formation of the Bengali regiment and the Ambulance Corps. Bengali youth took full advantage of the opportunity of rendering military service and taking part in the defence of the country. The war attracted their imagination and diverted the energy of a large number but also made them realise all the disadvantages and discriminations from which they suffered as members of a subject race, and made them feel more keenly than ever the necessity of political emancipation of their country. The War gave Indian youth, specially in Bengal and in the Punjab (the latter province contributing over 80% of the Indian soldiers who made great sacrifices in the War), a greater urge for self-expression and an inspiration for the independence of their country. Indian soldiers gave their lives freely on the battlefields of France and Mesopotamia in defence of the Empire, strengthening the claim for India's self-government. Terrorists again became active between 1914 to 1917, and some of them tried to establish contact with the King's enemy. Government had again to tighten their grip, and by 1917 a large number of

Indian youths were again under arrest under the Defence of India Act. This affected mostly Bengal and the Punjab.

The Komagata Maru incident which was the outcome of an attempt by one Gurditt Singh and 600 Sikhs to protest against the inclusion of a clause known as the "continuous journey clause" in a Canadian Privy Council's order created considerable sensation in the country. The incident took place at Budge Budge near Calcutta. The Steamship "Komagata Maru" was chartered by Gurditt Singh, and he wanted to take 600 Sikhs direct to Canada, violating that order. They were not allowed to land there, and on their return to Budge Budge they were ordered to proceed directly to the Punjab by train. They refused to obey on the plea of wishing to make a representation to Government in respect of their grievances. When they attempted to land, several persons were fired at, and some were arrested. The leader Gurditt Singh was a fugitive for several years. Though it was a small incident, it was by no means an isolated one and produced considerable impression at the time on the minds of young India, and the authorities connected it with the general revolutionary movement. This happened in 1914.

This period of revolutionary movement ended with the release of political prisoners, including those who were transported for life in the Alipore Bomb case, on the introduction of the Montford Reforms in 1920. From 1920 to 1928 was a period of comparative lull in the terrorist movement. It again flared up in 1929 in a more serious form than ever and continued up to 1934. Political developments from 1919 to 1929 form an important phase for the study of the launching, progress and aftermath of the non-co-operation movement, a new chapter in Indian politics, during which period the influences of leaders like Mahatma Gandhi, Mr. C. R. Das and Pandit Motilal Nehru were in their height.

The Movement for Complete Independence

In describing the alignment of political parties in India and their creed, Lord Morley said in the House of Lords in moving the second reading of the Government of India Act of 1909, that there were three classes of people. First, the extremists, who nursed fantastic dreams that some day they would drive the British out of India. The group was again subdivided into physical force extremists and academic extremists. "Their number" said Lord Morley "did not exceed one tenth or even three per cent of what are called the educated classes in India." The second class, according to him, did not nourish hope of any such revolutionary achievement, but wished for autonomy on the colonial pattern. And the third section of this classification asked for no more than to be admitted to co-operation with the British administration in India and to find a free and effective voice in expressing the needs of their people. "I believe", continued Lord Morley, "the effect of the reforms has been, and will be, to draw the second class into the third category who will be content with being admitted to a fair and full co-operation." One section of the first class of extremists who believed in the efficacy of physical force lost their confidence in the sense of fairness of the British people and in British justice largely because of Government's policy of ignoring public opinion, and of repression in checking the anti-partition agitation. It will not be far wrong to say that extremism of this character was born of a sense of exasperation. The stationing of armed Gurkhas, at whose hands the honour of Hindu women in East Bengal was alleged to have suffered, and the communal clash at Jamalpur in Mymensingh and other places between Hindus and Moslems, incidents which were believed by Hindus to have been actively encouraged or at least connived at by Government, were directly responsible for converting a section of our young men into extremists of the worst type. Their mentality was also greatly encouraged by the

success of Japan over Russia in the Russo-Japanese War. It was taken as a victory of Asia over Europe, and convinced the Indian people that, given the opportunity and training, it was by no means impossible for a determined Asiatic nation to defeat even a great European power. Though their methods were entirely different, hatred for the British and the common goal of securing freedom for their mother country from foreign domination were the common tie between the two categories of the first class of extremists. There was soon an ideological clash between them and those who claimed only fair and full co-operation, and this led to schism in the Congress in 1907. That Midnapore had become one of the nursing grounds of extremism and intolerance of sober constitutionalism in the nationalist movement was first noticed by Sir Surendra Nath Banerjea and some of his collaborators at the conference held in that district in the beginning of 1907. In the Surat Congress they, in conjunction with the extremists of the Maharastra and the Punjab, challenged the constitutionalists over the election of the President selected by the Reception Committee and made the holding of the session impossible that year. Lord Morley rightly pointed out¹—"It was among the students in parts of India that unrest especially prevailed. The class was rapidly being drawn into something like a spirit of revolt against the British Government, and the movement was unmistakably coming to a head, notably in Upper India. A feeling gained ground that the last twenty years had been a period of reaction, and in combative response the idea of complete independence of England began to appeal to youthful imagination. This marked the line of cleavage between moderate and extremist in the native party of reform."

New forces were at work slowly and imperceptibly. The doctrine of independence and anti-British feeling

¹ "Recollections" by Viscount Morley, Vol. II, p. 154.

began to be preached openly by the newly founded extremist journal, the *Jugantar*, under the editorship of Mr. Barindra Kumar Ghose. It believed in the cult of violence and impregnated Bengali youth with that idea. Mr. B. C. Chatterjee, a well-known member of the Calcutta Bar, writes.¹ "The *Jugantar* laughed loudly and irreverently at the doctrine of constitutional agitation professed by the moderate party, which according to this apostle of revolution, was a shameless caricature of the term, as it was understood in the free countries of the world." The Congress, according to Barindra Kumar and his associates, had done its duty by rousing India's aspiration for self-government and by bringing about unity amongst workers in the cause of nationalism, and it was high time that the Congress should make room for those who were determined to secure freedom for their motherland by sacrificing their lives. The *Jugantar* was the principal exponent of the theory of violence, but many other papers came into existence that were on the border line of violence and constitutional agitation. Bengali Hindus, young and old, Government servants and men in the professions, devoured these writings, admired their sentiments, though often without realising the far-reaching effect of such writings on the mind and character of the youth of the country and the future of the Indian nationalist movement. The Government of the day showed great toleration. They were unprepared for this outburst and taken by surprise, and they hoped that the movement would soon die a natural death. At first there were no prosecutions of these papers, and no bans on their circulation. Public meetings in Calcutta with the object of vilifying and condemning the British Government became a part of the normal life of the metropolis.

The extremist movement, however, had its elevating effect on the character of young Bengal. Bengali young

¹ Mr. B. C. Chatterjee's "Whither Bengal", p. 48.

men soon developed character, a greater sense of self-respect and passionate love for India, her traditions and culture. They learnt to undergo sufferings for the advancement of the national cause and to sacrifice personal interest, comfort, and ease for the common weal. Patriotism animated the youth of the country, and they became more active and virile. They took to sports and physical culture. But unfortunately matters did not rest there. The constant dinning of anti-British slogans into the ears of young Bengal, and open preaching of hatred against Government, had their baneful effect on the minds of these impressionable listeners and readers. A number of them became violently anti-British and took vows to drive the English out of this country. The method they adopted was assassination, planned in great secrecy and almost with scientific precision. Secret societies were formed; unsophisticated youths were snared into those societies, and their feelings were worked up for revenge on those, whom they considered oppressors of the country, by assassination. The bomb outrage at Muzaffarpur, the murder of Narendra Goswami, the approver, in the Alipur conspiracy case, the assassination of Babu Ashutosh Biswas, the Public Prosecutor in that case, the attempt to wreck the train of the Lieutenant-Governor at Narayangarh in Midnapur and the murder of Sir William Curzon Wylie, Political Aide-de-Camp to the Secretary of State for India, were some of the first series of outrages that resulted from the preaching of hatred against the British on the platform and in the press, through so-called national songs and pamphlets that were broadcast throughout the country between 1906-1908. These murders opened the eyes of Anglo-India, and it was decided to suppress the movement by arrests, prosecutions and deportations. New laws were framed; old ones were brought out of the armoury. Circulars prohibiting Government servants and students from taking part in political meetings and demonstrations were issued and strictly enforced. The editors of nationalist newspapers were

hauled up for sedition, and sent to jail; their offices were searched, making it absolutely clear that Government meant to control the movement and to punish those who participated in or even sympathised with it. This scared away those who were taking an interest in the movement merely as a pastime or because it was fashionable to do so. But the action of Government had little deterrent effect on those who were deeply involved in the movement. Repression lacerated their body but only exasperated their mind; it stiffened their determination and made them more stoic in their resolve. Prosecution and punishment only made them heroes. They came back from jail with a brighter halo. Memories of murderers suffering capital punishment began to be cherished with regard and gratitude by a large number of their countrymen. Thus before long the British Government came to realise that mere repression would not produce the desired effect and decided to try political concessions along with repressive measures.

Speaking in the House of Lords on the second reading of the Government of India Act of 1909, Lord Morley as Secretary of State for India said: "Neither repression on the one hand nor reform on the other could possibly be expected to cut at the root of anarchical crime in a few weeks, but with unfaltering repression on one hand and vigour and good faith in reform on the other we all see good reason to hope that we shall weaken, if not destroy, these baneful forces."¹ This was exactly the policy that was followed by Government in tackling the situation. They seriously entertained the hope, and not without some justification, that political concessions would encourage the section of the Indian public "who claimed the right of being admitted to co-operation in the administration and to find a free and effective voice in expressing the interests and needs of their people." They were moderates or consti-

¹ Lord Morley's Speech, House of Lords, 23rd February, 1909.

tutionalists represented by some of the elder statesmen in the Congress. The Reforms Act of 1909 was meant to pacify the moderate section with a view to strengthen their position and to enlarge their following. The idea of granting autonomy or self-government to India was still far distant, though speaking on the Bill Lord Courtney said in the House of Lords: "I see no reason whatever for laying down the maxim that Colonial Self-Government can never, under any circumstances, come to pass in India."¹ On the other hand, speaking to the Classical Association in 1909, Lord Curzon said: "It will be well for England, better for India and best for all the cause of progressive civilization in general, if it be clearly understood from the outset that we have not the smallest intention of abandoning our Indian possessions, and that it is highly improbable that any such intention will be entertained by our posterity."

Morley-Minto Reforms

The Government of India Bill of 1909 introduced the following main changes viz., (1) the Legislative Councils instead of consisting of all nominated members should include partly nominated and partly elected members; (2) not more than two of the four members of the Executive Council of the Governors of Madras and Bombay need be officers of the Crown; (3) Bengal (consisting of West Bengal, Behar and Orissa) should be governed by a Lieutenant-Governor with an Executive Council consisting of not more than four members, and it was left to the Governor-General in Council to decide its constitution. The Government of India was invested with similar powers to create Executive Councils for other provinces administered by Lieutenant-Governors.

Speaking on the Morley-Minto reforms at Caxton Hall in London, Surendra Nath Banerjea said in 1909: "The scheme (Morley-Minto) contains no concessions which

¹ Lord Courtney's Speech, House of Lords, 24th February, 1909.

have not been in some form or other repeatedly asked for. So far from the scheme being lavish, I will say that it does not come up to our expectations in regard to many matters of vital importance. For instance, we want the power of the purse. We want definite control at least over some of the great departments of the State: over sanitation, education and the public works department.”¹

The most objectionable features of the reforms were the introduction of separate electorates for Moslems, and provision for giving them weightage regarding the proportion of representation much in excess of their population. The Congress accepted the reforms but passed resolutions pointing out their defects and their unsatisfactory character.

The reforms did not satisfy extremists. The inclusion of Indian members in the Executive Councils was no doubt welcomed by the constitutionally minded section of the community, and they attached due importance to this concession, but extremists were indifferent. The release of the persons deported under Regulation III of 1818 soothed the feelings of Indian politicians, at least the moderate section amongst them regarded it as a triumph for their agitation and an indication of a pleasant change in the outlook of Government. But neither the reforms nor this gesture of clemency made any impression on those who followed the path of violence.

The policy of repression continued unabated. The importance of Indian members of the Executive Council became soon patent. The Press Act of 1908, under which Government could ask for security up to Rs. 2,000 from any new press or upto Rs. 5,000 from an old press before granting a license, roused considerable popular opposition when this measure was first passed, and public opinion was never reconciled to it. It was placed permanently on

¹ “A Nation in Making” by Sir Surendra Nath Banerjea, pp. 276-77.

the statute book in 1910 and Mr. S. P. Sinha (afterwards Lord Sinha) was responsible for its final shape. This measure was very much in evidence during the Great War, and the Indian press was brought completely under official control by this Act which was wide in scope as well as in application. The Seditious Meetings Act of 1910, and the Rowlatt Act leading to the Punjab disturbances and atrocities are some of the unpopular measures passed and used by the Governments, both central and provincial, functioning under the Morley-Minto reforms.

The War created a difficult and extraordinary situation, and revolutionaries were not slow to take advantage of it. They applied themselves to embarrassing Government, and some were found to be in league with the enemy. This extraordinary situation revived stringent measures by Government. The Defence of India Act which was the counterpart of the Defence of the Realm Act of Great Britain was passed and strictly enforced in controlling the activities of the people who were mischievously acting or inclined. The Home Rule League movement by Mrs. Besant, like the anti-partition agitation in Bengal, drew into its fold a large number of young men, and the same old programme of swadeshi, boycott, national education and home rule was revived. A large number of people were arrested making Government very unpopular. The modification of the partition in 1911 by a Royal declaration at the end of the Delhi Durbar pacified Bengal, at least apparently, for nearly four years. The despatch of Lord Hardinge foreshadowing the grant of provincial autonomy as a justification of the removal of the seat of the Central Government from Calcutta to Delhi, and raising Bengal to a Presidency under a Governor with an Executive Council on the same basis as Madras and Bombay satisfied Surendra Nath Banerjea and his associates of the anti-partition agitation. The King-Emperor was given a loyal reception during his visit to Calcutta, and all sections of the people, moderates and extremists, and

even those who were supposed to have sympathy with the revolutionary movement, were seen joining in the demonstration of loyalty to His Majesty at the end of the pageant on the Calcutta maidan. There was apparent calm for a few months. But revolutionaries were far from being pacified or inactive. The outrage on Lord Hardinge on the occasion of his State entry to Delhi in December, 1912, gave a shock to the whole of India, and there was a widespread feeling of sympathy for the Viceroy and of abhorrence for the crime. But this showed that things were far from being quiet or peaceful. Lord Morley, though he described the partition of Bengal as a settled fact, also felt that "it was a measure which went wholly and decisively against the wishes of the majority of the people." Even Lord Kitchener on his return to London from India gave Lord Morley to understand that it would be desirable to do something to unsettle the partition of Bengal. The partition was modified. Calcutta lost her political importance as the capital of India; still public opinion in the province welcomed the announcement. It registered the triumph of constitutional agitation. But revolutionaries were not slow to claim the credit, and public opinion in the country acquiesced in this claim and apportioned the credit to both.

The newly formed Executive Councils with at least one Indian in them functioned well in the three provinces of Madras, Bombay and Bengal. But the principle of Cabinet responsibility was neither intended in theory nor developed in practice. The councillors were mere advisers to the Governor, and worked more as departmental heads than as Cabinet Ministers. According to the statute, except in certain matters, such as maintenance of law and order for the safety of the province, Government was to be guided by the decision of the majority of the Cabinet. The Governor had a casting vote, and he could over-rule the Council on questions involving the safety of the province. The public naturally did not attach much

importance to the presence of a single Indian member on a Council of five including the Governor. The limitations of the Indian member in influencing the decision of Government were obvious; and in fact, there was no visible change in the policy of provincial Governments on major issues. Moreover, these provincial Governments were under the triple control of the Central Government and through it of the Secretary of State, viz.,—financial, legislative and administrative, and as such they had very little independence, although the provincial Governments always received a good hearing from the Centre or Whitehall when they wanted to press any particular issue or the view-points of the provinces concerned on any question. Indian members of the Executive Councils naturally tried to represent public opinion in the Cabinet and they fulfilled the function of liaison between Government and the public to some extent which was one of the manifest objects of the appointment. But unfortunately, there was also a tendency on the part of these Indian members to regard themselves as full-fledged officials who were not expected to mix freely with the public; in fact, any such inclination on their part hardly met with encouragement from the rest of the Government members, and this, to a large extent, neutralised their usefulness and affected their popularity.

“The Morley-Minto Reforms admitted the need for increased representation while reiterating the impossibility of basing it generally on a direct or general franchise. They admitted the desirability of generally securing non-official approval to Government legislation, though they trusted in an emergency to the support of nominated members, to the division of interests between different classes of elected members, and in the last resort to overriding legislation in the Indian Legislative Council where an official majority was retained.”¹

¹ Report on Indian Constitutional Reforms, 1918, p. 51, para. 79.

The Reforms enlarged the deliberative sphere of the Councils by conceding the right to non-official members to move resolutions on questions of general public importance, though such resolutions could be disallowed by the President without giving any reason other than that in his opinion the resolution could not be moved consistently with the public interest. Non-officials were given a majority in the Councils. The central legislature, though it retained the right to legislate for the whole of India, did not ordinarily interfere in matters which were within the competence of the provincial Legislative Council and legislated for provinces only when the departure was justified in certain special circumstances. The Council had no responsibility, but it could criticise Government actions. "The Morley-Minto Reforms are the final outcome of the old conception which made the Government of India a benevolent despotism, tempered by a remote and only occasionally vigilant democracy, which might as it saw fit for purposes of enlightenment consult the wishes of its subjects."¹

Though the legislatures were enlarged and a non-official majority was created in the provincial Councils, the atmosphere was still unreal; debates were lifeless unless feelings were roused or interests were directly affected. The official bloc, with the help of elected European members and nominated non-officials, often decided the issues exactly in the way that Government wanted, and this had an irritating effect on elected Indian members. Non-official members seldom introduced Bills, unless they were assured of Government support beforehand. Many official Bills were passed without discussion. Between 1910-1917, the Imperial Council passed 131 laws of which no fewer than 77 were passed without any discussion. It must be remembered, however, that most of these measures were non-contentious, as Government decided to avoid

¹ Report on Indian Constitutional Reforms, 1918, p. 52, para. 81.

contentious legislation during the War. Non-official members, in the Imperial Council as well as in the provincial Legislative Councils, made good use of the right to ask questions and move resolutions. It is true that quite a large percentage of these resolutions were withdrawn after official replies or defeated on division. But a fair number of them were also accepted by Government and given effect to; some non-official resolutions, though rarely, were carried against Government by the combination of non-official members, and unless Government afterwards changed their opinion, which they seldom did, official resolutions would be published explaining why Government could not accept them.

Though the Morley-Minto reforms were a definite step forward towards representative institutions, the system cannot be described as foreshadowing the introduction of parliamentary bodies or responsible government in the country. The war widened India's political horizon; people came to realise that in the great struggle which was considered to be a fight by England and France on behalf of the weaker nations of Europe, Indians had made great sacrifices and given substantial help to Great Britain, although her position as a world power was at stake. The British people were much impressed by the spirit of comradeship displayed by Indian soldiers in the grim struggle of 1914-1918 and were full of appreciation for the services rendered to the Empire by India. She had been claiming political advancement for nearly thirty years and was getting restive. The Indian National Congress was already aiming at the colonial form of self-government. The Home Rule League had greatly encouraged this ambition and kindled the imagination of politically minded youth. Turkey having joined the war against Great Britain, Indian Moslems felt deeply concerned for the future of the Ottoman Empire. Moslems had to be pacified as far as possible and with them it was a case of divided loyalty between their temporal ruler the

British and the spiritual head of the entire Moslem community the Khalifa. The Morley-Minto reforms had ceased to be attractive to Indian politicians. Nineteen members of the Imperial Legislative Council submitted a memorandum suggesting a scheme of reforms. The Congress which since the Surat session in 1907 had become hopelessly divided into the moderate and the extremist groups was slowly working towards a reunion. Positive signs of such reunion were visible in 1915 in the Bombay session, and the reunion was effected at Lucknow in 1916. Not only was there a union in the Congress camp, but the Moslems too who had held aloof from the Congress since the anti-partition days came to an understanding with the Congress on the question of constitutional reforms, and it was possible for the Hindus and Moslems of India to agree to a joint scheme known as the Congress-League scheme, putting forward concrete proposals for Indian constitutional advancement. At the Lucknow session, the Congress adopted a scheme of reforms on the basis of separate electorates for Hindus and Moslems in the hope that this concession of separate representation to Moslem opinion would help Hindu-Moslem unity and lead to greater consolidation of the Indian nation within the next few years. The concession was, therefore, merely a means to an end, adopted as a temporary device. This hope, however, has not yet been realised. On the other hand, separate electorates are considered to be directly responsible for widening the gulf between the two communities and for gradual deterioration of communal feelings. The Moslem League also held its session at Lucknow simultaneously with the Congress and adopted the scheme of constitutional advancement proposed by the Congress. This came to be known as the Congress-League scheme, commonly described as the Lucknow Pact. One important proposal in the scheme was that "no Bill, nor any clause thereof, nor a resolution introduced by a non-official member affecting one or the other community (which ques-

tion is to be determined by the members of that community in the Legislative Council concerned) shall be proceeded with if three-fourths of the members of that community in the particular Council, Imperial or Provincial, oppose the Bill or any clause thereof or the resolution." This safeguard was suggested to counteract the evil effects of separate representation. Other important proposals were (1) that there should be an Executive Council in every province with a non-I.C.S. Governor, and half the members of the Executive Council should be non-official Indians to be elected by the elected members of the provincial legislature. Similarly at the centre half the members of the Governor-General's Executive Council should be Indians to be elected by the elected members of the Imperial Council. (2) All Bills passed by the Council should be assented to by the Governor-General before they became law, but the Crown could exercise its veto within 12 months. (3) The Imperial Council should have no power to interfere with the Government of India's discretion regarding the military affairs and foreign and political relations of India, including the declaration of war, the making of peace and the entering into treaties. There were proposals for abolition of the Secretary of State's Council, and claims for India being given the same rights and status as a Dominion in a council or body which was to be constituted for Imperial affairs. There were also provisions for enlargement of the supreme and provincial Councils to be elected on a wider franchise and that there should be direct instead of indirect representation. Besides these, there were proposals for granting autonomy to the provinces in internal administration and for separation of central and provincial revenues, the provinces having full control over the latter.

Montagu-Chelmsford Reforms

Mr. E. Montagu, Secretary of State for India, made a declaration in the House of Commons on the 20th of

August 1917 of the intention of His Majesty's Government to bring about the "increasing association of Indians in every branch of the administration, and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire." Mr. Montagu also said on the occasion that substantial steps in that direction would be taken as soon as possible. The Secretary of State with some of his colleagues came out to India in the cold weather of the same year and discussed the problem with Indian leaders of all shades of opinion, and the scheme proposing a dyarchical form of Government in the provinces was published in July, 1918. It was a signal for war amongst the different political parties and leaders in India. The extremist organs condemned the scheme in unmistakable language. Mrs. Besant wrote in her *New India* :—"The scheme is unworthy to be offered by England or to be accepted by India." The Madras leaders condemned it in a joint manifesto, and Mr. Tilak described it as "entirely unacceptable." The scheme published in the Montagu-Chelmsford Report fell far short of the proposals either in the memorandum of the nineteen non-official members of the Imperial Legislative Council or in the Congress-League scheme. There was no element of provincial autonomy in the scheme; on the other hand, Dyarchy displayed a lack of confidence in Indians and provided room for a clash between the two halves of Government. The control of the central Government and of the Secretary of State over financial, legislative and administrative matters remained practically unrelaxed. The European members of the Executive Council were to be selected from persons who had been at least 10 years in the service of the Crown so that the posts were virtually reserved for the I.C.S. No change was proposed in the constitution of the central executive. Thus the reforms proposed proved unattractive to Indian politicians of advanced views. The scheme was, however, acceptable to the Moderates as

it made a part of the provincial Government responsible to the legislature and removable by its adverse vote. This is the essence of parliamentary democracy, and as such the Moderates welcomed it.

The special session of the Congress was held at Bombay to consider the reforms. Surendra Nath Banerjea, Bhupendra Nath Basu, Ambica Charan Mazumdar, Dinshaw Wacha, and some other veteran leaders were absent from the Congress; they held a separate conference under the Chairmanship of Surendra Nath Banerjea. This was the beginning of the National Liberal Federation, which became the organisation of the elder leaders of the Congress who thenceforth formed themselves into a separate party. The Congress reaffirmed the principles of the reforms proposed in the Congress-League scheme and declared that nothing less than self-government within the Empire would satisfy the legitimate aspirations of the Indian people. The Congress passed a resolution expressing its opinion that the Indian legislature should have the same measure of fiscal autonomy as the legislatures of the self-governing Dominions of the Empire and described the reforms as "disappointing and unsatisfactory." The Congress also made various suggestions regarding the constitution and powers of the central legislature and the central executive, and suggested that a statutory guarantee should be given for the grant of full responsible government to the whole of British India within a period not exceeding 15 years. As regards the provinces, the Congress resolved that after the first term of the reformed Councils the Governor should have the same relation with the Ministers with regard to transferred subjects as is prevalent in the self-governing Dominions, and that the status and salary of the Ministers should be the same as that of the members of the Executive Council. The Congress, while holding that the country was ripe for full provincial autonomy, was yet prepared, with a view to facilitating the passage of the reforms, to accept Dyarchy for a period of six years.

The Moslem League also practically endorsed the views expressed by the Congress. In the annual session of the Congress held in December 1918, at Delhi, this attitude of moderation was changed into a demand for full responsible government in the provinces at once and for extension of the reforms to the whole of British India. Thus, the schism between the Moderates and the Extremists was complete, and this led to the secession of the former from the Congress leaving it in the hands of extremists.

In 1917, Government appointed a committee with Sir Sidney Rowlett as President "to investigate and report on the nature and extent of the criminal conspiracies connected with the revolutionary movement, to examine and consider the difficulties that have arisen in dealing with such conspiracies and to advise as to the legislation, if any, necessary to enable Government to deal effectively with them." The Committee submitted its report in 1918 and made certain recommendations regarding legislation, investing Government with powers to deal expeditiously with cases of seditious conspiracies, with powers to arrest persons reasonably believed to be connected with seditious conspiracies and to confine them in such places and under such conditions as were prescribed. The Committee further suggested that Government should take powers to keep these arrested persons continuously under detention, and they urged a permanent change in the ordinary criminal law with a view to meet the situation created by terrorist conspiracies and outrages. A Bill was introduced in the Imperial Legislative Council to give effect to these recommendations. There were countrywide protests against the Bill, known as the Black Bill.

Mahatma Gandhi who since his return from South Africa in 1915 had been staying in Ahmedabad in the Bombay presidency made his appearance in Indian politics in connection with the position of Indians in South Africa

before and during the War and rendered a great national service to the cause of the Indians overseas. His reputation as a selfless worker in the cause of the weak and oppressed was very high. A believer in soul force over material might, he declared his determination to launch "satyagraha" or passive resistance against the enforcement of the Rowlatt Act. There were demonstrations all over the country in which Hindus and Moslems greatly fraternised, Hindu leaders being allowed to address meetings from the pulpit of a mosque, and Hindus publicly accepting drinking water from the hands of Moslems. This Hindu-Moslem unity was the direct outcome of the excited Moslem feeling over the unsettled future of Turkey after the War and the danger to the Khilafat in which all Indian Moslems were vitally interested, as they felt that the position and stability of the Moslem religious head were in serious danger. Moslems, extremely sensitive as they are about their religion, ascribed the situation largely to the indifference of the British to the feelings of Indian Moslems. Hindus sympathised with them, and this led to a temporary unity between the two communities in an unprecedented manner. The Congress under the leadership of Mahatma Gandhi took up the matter and reaped full political advantage out of the excited Moslem feelings. This development in Indian politics requires more than a passing attention and will find place in the chapter dealing with the growth of political consciousness of Moslems and the part played by them in our national movement.

Since the suppression of the Indian Mutiny, the Punjab has been the principal recruiting ground of the Indian army. During the War, over 80% of Indian soldiers were recruited from this province. The Punjab Sikhs and the Punjab Moslems freely joined the army and bore the first brunt of the German attack in Flanders, and gave excellent accounts of themselves in Mesopotamia, Egypt and other theatres of the war. Besides men, the

besides advising people to boycott law courts, schools, and colleges, and to give up all honorary appointments and titles. The elections under the Government of India Act of 1919 were, therefore, not fought on party tickets, but by individual candidates as such. The Moderates or Liberals took full advantage of the situation, but they too were not yet an organised party and did not run candidates. But a large number of the candidates who fought or were successful had Liberal leanings. Success depended mostly on the influence, position and popularity of the individual candidate. Communal affiliations also were of great importance. In the second general election in 1923, however, the Swaraj Party all over India and the Justice Party in Madras tried to run candidates on party lines and on a definite party programme. The Swaraj Party collected large party funds and secured the support of almost all the important newspapers and periodicals for its candidates. This was the first endeavour to run candidates on behalf of a political party, though the party selection was still often made with regard to the social position and local influence of candidates rather than to their political convictions except in the cases of those candidates who were especially selected as having suffered imprisonment in connection with the non-co-operation movement in 1921-22. Local landlords and lawyers were the most favourite candidates. There were four general elections under the Government of India Act 1919. The position as regards the contest on party lines and programme was better in the second and third elections in which the Justice Party and the Swaraj Party fought on party alignments. But the programme of the Swaraj Party was a negative one viz., wrecking the constitution, and it could not, therefore, provoke the enthusiasm that would have arisen had it put forward a constructive programme or appealed to the electorate on its record. The only party in India that did so was the Justice Party in Madras. The wide area of the constituencies, the difficulties of communications,

the ignorance of electors about the duties and obligations of elected representatives, and the apathy of voters to economic or political questions, mainly from their lack of education, resulted generally in the absence of any contact of representatives with their constituencies. They seldom troubled to visit them between one general election and another. The practice of canvassing the opinion of constituencies on important issues before the legislature, therefore, never developed. As representatives had to depend mostly on their personal resources to meet the expenditure of maintaining contact with their constituencies most of them found it financially impossible to do so.

On the introduction of the new constitution in the beginning of 1921, Ministers were selected and Governments formed. Except in Madras where the Justice or Non-Brahmin Party fought the elections on a party programme, there were no well-organised parties in any province, though in the Punjab the Moslems under the leadership of the late Sir Fazli Hossain acted together in the first Council and joined some Hindus and Sikhs representing rural areas in the second Council and called themselves the Punjab National Unionists. In the first Council, Hindus and the Sikhs generally opposed Government, while in the second Council the main group in opposition consisted of the Hindus and the Sikhs of the Swaraj Party. In the Punjab Council, the division of parties was communal rather than political, though the conflict of urban and rural interests also sometimes influenced party alignments. The Sikhs who owed their allegiance to an outside religious organisation almost always opposed Government, and they had the support of the majority of Hindu members in the Opposition. The stability of Government in the first Council at least was mainly dependent on the official and nominated bloc. But gradually Moslems developed a greater sense of discipline and cohesion and secured the support of a few Sikhs and Hindus as well. This helped the formation of

the Punjab National Unionist Party that fought the elections under the present Constitution on a party programme and formed the Ministry.

In Madras, the Justice or Non-Brahmin Party was formed to fight the Brahmins and challenge their political domination in the presidency. The majority of Brahmins non-co-operated in 1921. This gave their opponents an advantage; elected in the largest number to the non-Moslem seats they formed a single majority party. Ministers were selected from the Justice Party and received full and loyal support from their followers. The Party was well organised. The Ministry informally, as there was no provision in the Act, developed the practice of following the lead of a "Chief Minister" who was the leader of the party and selected his colleagues. On coming into power, the Ministry consolidated the position of the party by securing recognition of the claims of non-Brahmins to the public services, by passing an Act to reorganise the Madras University, and by encouraging nascent industries. In matters of law and order, the Ministry helped the reserved side of Government by passing special measures to fight the non-co-operation movement. The Act democratising the constitution of the Madras City Municipal Corporation also stands to the credit of the Justice Party. The Government in the province of Madras, from the very beginning, functioned as a unitary one, the two halves of Government holding joint meetings and deciding all questions of policy in common understanding. This was largely possible because of the solid support the Ministry had independently of the official bloc and of the initiative taken by the Governor, Lord Willingdon, who always encouraged such joint deliberations. After 1923, the Opposition was somewhat strengthened by the presence of the Swarajists aided by independent non-Brahmins who were dissatisfied members of the Justice Party. Nevertheless, the Party retained its majority and formed the Ministry. In 1926, the Swarajists gained further strength and formed the

largest party in the Council, but as they refused to form a Ministry the power was still retained by the Justice Party. It did not, however, show the same cohesion as before. There were differences amongst Ministers, and some resigned on the question of co-operation with the Simon Commission to enquire into the working of the Indian Constitution. The Moslems were few, and their influence in the Madras legislature was negligible, nor did they organise themselves on communal lines.

In Bengal, as in most other provinces, the elections were fought without any party label and the candidates depended mostly on their personal influence and popularity for their success. Sir Surendra Nath Banerjea, the ex-leader of the Congress, who gave his unstinted support to the Montagu-Chelmsford reforms when the constitution was in making and seceded from the Congress with a number of colleagues because the Congress decided to reject the constitution, was selected as one of the Ministers by the Governor, Lord Ronaldshay (Marquess of Zetland). Sir Surendranath, as the father of Indian nationalism, had great prestige, and till his secession from the Congress and acceptance of office he had great influence as a political leader. In Bengal his position was unique; he was the hero of the student community. But his popularity and influence suffered \geratly because of his acceptance of office. In a House of 140, officials, nominated and European elected members, who always supported the Ministry, were 40; out of the balance about 30 members, almost all Hindus, formed the Opposition, and nearly 70 supported the Ministry. Amongst the supporters of Government there was a tendency to distinguish between the reserved and the transferred departments. Elected members were more critical about the policy and measures of Government for the maintenance of law and order. The Criminal Law Amendment Act which ⁴was brought into operation to check terrorism, and, the steps taken by Government in the police department to

fight the non-co-operation movement, which led to the arrest and imprisonment of a large number of prominent Congress leaders including Mr. C. R. Das and Mrs. Das and some other ladies in connection with the boycott of the visit of His Royal Highness the Prince of Wales to Calcutta towards the end of 1921, made the provincial Government as a whole unpopular and placed the Ministers in an extremely difficult and delicate position. They had to support the action of the Governor and of their colleagues in the reserved side of the Government and to stand by the policy for which they had no direct responsibility. The Ministers, however much they disliked some of the actions of the police, could not publicly say so. European non-official members, who formed a solid bloc of 18, were very keen on the maintenance of law and order and on fighting terrorism and the non-co-operation movement. They naturally resented the boycott of the Prince's visit. The Ministry could ill-afford to alienate the support of the Europeans, who rendered valuable help in the working of the new Constitution, especially as Hindu and Moslem support was rather uncertain and was liable to be weakened by communal issues and on questions of retrenchment and taxation. Elected Indian members, both Hindus and Moslems, not having a party backing and being unaccustomed to shoulder responsibility, were often reluctant to incur the displeasure of the electorate by supporting Government in unpopular measures, and expected the Ministers to oppose these. As the Ministers could not afford to fall in line with the wishes of their non-official Indian supporters, they became critical of the actions of Ministers. The bitter attack on the Ministry by the nationalist press and the general support of the non-co-operation movement made the ministerialists very nervous at times, and they tried to maintain their popularity by criticising vehemently the reserved side of Government, by voting against measures introduced by it or moving cut motions on its budget demands. The police

and the jails were the favourite subjects of attack and afforded considerable opportunity to the non-official Indian members, both on the Government side and in the Opposition, to indulge in invectives against the bureaucracy. Ministers had to use their personal influence with their supporters to prevent them from voting against the reserved side of Government. But it always caused a serious strain on the loyalty of their supporters. The hill exodus of Government during the summer months was a favourite subject of criticism. A popular Government was expected to give up the practice of going to the hills, and a popular legislature to discourage any attempt of Government to continue the arrangement. Almost every year the budget demand for the expenses of the exodus to Darjeeling met with opposition from a large number of Indian non-official members. It was a demand of the political department which belonged to the reserved side of Government. The abolition of Divisional Commissioners was also another matter often urged by the majority of the Indian members of the House. Government had to oppose the proposal on administrative grounds and also because the provincial Government had no control over the cadre of the Indian Civil Service; the Secretary of State's sanction was necessary before the post of the Commissioners could be abolished or their number reduced. But Indian public opinion generally remained unconvinced, and the inability of the Ministers to make the reserved side of Government yield to non-official opinion often supplied the extremist press with an additional argument against the reforms.

During the seventeen years of the working of this Constitution, there were innumerable occasions when elected Indian members, both Hindus and Moslems, were inclined to be severely critical of some of the measures introduced by the reserved side of Government for suppression of terrorism and against secret criminal conspiracies. As the Executive Council was

non-responsible to the House, they felt reluctant to accept responsibility for the actions of the Executive Council by lending it necessary support, though there were instances when the supporters of the Ministry did help Government in placing on the statute book some most reactionary legislation to check terrorism in Bengal. The Bengal Criminal Law Amendment Act was first brought into operation in 1921; it contained drastic provisions regarding the arrest and detention of persons who were supposed to have complicity in terrorist conspiracies. This Act had to be amended from time to time to meet the exigencies of the situation and the new technique of the conspirators. A large number of young men, almost all Hindus, were taken into custody under this Act and tried by the special tribunal constituted under it. Innumerable Hindu educated middle class families were affected by this measure, and as such it was highly unpopular. It became almost impossible for a Hindu public man to survive in public life if he showed any inclination to support this measure. In elections, a candidate's conduct as a member of the legislature regarding political prisoners generally decided his fate at the polls. But when conspiracies became widespread and political assassinations became rampant from 1930 to 1934 and Government had to introduce very stringent measures to check crime, even a good number of Hindu members, who were amongst the supporters of the Ministry, did not hesitate to face the responsibility in proper spirit. It must be noted, however, that this cost most of them their seats in the elections under the new Government of India Act of 1935.

The Moslem members of the legislature gradually abjured their nationalist attitude and formed themselves into a separate bloc in the Council and generally stood by the Moslem Ministers and also at times followed the advice of the Moslem member of the Executive Council. This development took place from 1926, the year of serious Hindu-Moslem riots in Calcutta. In the first Council

under the Montagu-Chelmsford reforms Moslems like most of the Hindus voted as individuals and not as a party. In the second Council (1924-1926), the Khilafat movement and the Hindu-Moslem pact sponsored by Mr. C. R. Das greatly influenced the attitude of the Moslem members; a large number of them followed the lead of Mr. Das, and helped him in wrecking Dyarchy by voting against an entirely Moslem Ministry. The Hindu-Moslem riots of 1926 and similar riots all over India, the abolition of the office of Khalifa by the Angora Assembly in 1924 rendering the Khilafat movement an extinct political force so far as the Indian Moslems were concerned, the death of Mr. C. R. Das, all these contributed to the deterioration of communal feeling in Bengal along with the rest of India. From 1926 onwards the Moslem members of the Bengal legislature showed a more separatist tendency than before. Another factor that greatly contributed to the separatist attitude of Moslems was the policy adopted by the Swaraj Party in the Council over the Bengal Tenancy Act Amendment Bill and the Rural Primary Education Bill. An amendment of the Bengal Tenancy Act was urged by the tenants' representatives in the legislature from 1922 on. The Maharajadhiraja Bahadur of Burdwan was then the member-in-charge of the revenue department. As the premier landlord in the province, he took a long view of the situation and was anxious to meet the tenants' demands by conceding more rights to them, and by introducing provisions in the Act to check abuses of privilege by landlords. The Act had been in operation since 1885, and this was the first attempt at a comprehensive amendment of the law. A careful survey of all the rights and obligations of both landlords and tenants was necessary before the amendment could be undertaken. A committee was appointed to enquire into the matter and to suggest amendments. It was a long drawn out process, and no Bill could be introduced before 1928. In the meantime, there was more than one change in the personnel of the

Revenue Member. The Swaraj Party, at the instance of Mr. Subhas Chandra Bose, entered into a pact with the landlord members of the House, and the voting on the Bill was largely on a pro-Hindu and pro-landlord line. Moslem members were greatly interested in the enlargement of the rights and privileges of tenants. But they were out-voted by Government, supported by the Hindu landlords and the Swarajists consisting mostly of Hindus. The small number of Moslems who belonged to the Swaraj Party were under political and other obligations to it and had to go with the party against their own inclinations. Similarly, the division over the Rural Primary Education Bill also was more on communal than on political lines. Hindu landlords, big and small, opposed the idea of the imposition of the education cess on land to meet the cost of free primary education. Moslem members were keen on the measure, as it would have helped the spread of literacy amongst the Moslem community. But the opposition of Hindus wrecked the Bill twice at the Select Committee stage between 1925 and 1926 and it was finally passed into law only because Hindu members walked out of the House in 1930 by way of protest against the Government decision to pass it in spite of Hindu opposition to some of its provisions. Thus, between 1926 and 1930, the communal division in the legislature became more marked. This reflected the communal feelings in the country, and it may be largely attributed to the growth of political consciousness among Moslems, as fostered by separate electorates, and to their disapproval as a community of the civil disobedience movement and terrorism. Government were not slow to take advantage of the feeling in forging measures to meet the situation created by the civil disobedience movement and the terrorist outrages. The Moslem members of the legislature generally supported the executive Government in their action, whereas the majority of Hindus often opposed them.

The first important legislation introduced by Government in the Bengal Council under the Montagu-Chelmsford reforms was the amendment of the Calcutta Municipal Act of 1899. Sir Surendra Nath Banerjea as Minister-in-charge of the department of local self-government took the first opportunity of overhauling the Calcutta Municipal Act, which he had disapproved as a member of a previous legislature when he resigned his seat on the Corporation along with 27 colleagues in protest against Government action. In the new Bill which he introduced, Surendra Nath proposed completely to democratise the Corporation by lowering the franchise, and doing away with all governmental control. He himself described the new constitution of the Corporation as "veritable Swaraj." Official opinion was against this relaxation of Government supervision and control, but the Governor Lord Ronaldshay was determined to support the new Ministry, and the Indian Civil Service, true to its traditions, instead of opposing gave all possible help to the measure in order to make it a perfect one. Mr. Payne, the I.C.S. Chairman of the Corporation, and Mr. S. W. Goode, the I.C.S. Secretary to the local self-government department, made valuable contributions in this direction. The non-official European community of Calcutta, though reluctant to make the great experiment of handing over the municipal administration of the city, in which they had so large an interest, to purely non-official Indian hands, agreed to the proposal with a good grace. Their attitude was no doubt largely determined by that of the Governor and of the officers belonging to the Indian Civil Service with whom they were in close contact. Difficulties arose, however, over the demand of Moslems to be allowed to elect their representatives through separate electorates on the analogy of the new Government of India Act. This claim of Moslems was supposed to have been favoured by the European members and Moslem members of the Government. Thus, though not outwardly at least inwardly, the Ministry which

consisted of two Hindus and one Moslem was divided, and there was difference of opinion amongst the members of the Executive Council including two Europeans, one Hindu, and one Moslem. It is to be noted that the division was frankly on communal lines, the Europeans supporting the Moslem claim for separate representation in the Corporation. Non-official Europeans also put forward a similar claim on behalf of Moslems. This placed Sir Surendra Nath Banerjca in a difficult and awkward position. Hindu opinion was definitely against the proposal; moreover, the Bill, as originally conceived and introduced by Government, did not contain any such provision. Moslem feelings were roused, and they stuck to their claim. They were all the time conscious that they could count on the sympathy and support of the Europeans, both official and non-official. At one stage, the prospects of the Bill looked gloomy and the Minister-in-charge felt despondent. But the matter was settled by putting a nine year limit to communal representation, *i.e.*, the first three elections should be held on a separate roll after which it would become automatically joint. This compromise was suggested by the leader of the European party in the House and accepted by Sir Surendra Nath Banerjca. It satisfied Moslems, but Hindus were never reconciled to the measure, and it took away much from the popularity of the new Municipal Act and provided a handle for the extremist section of Hindus to attack the Ministry, especially the author of the Act.

Members of the new legislatures all over India were very keen on retrenchment, especially on the reserved side. The high pay of the Imperial services and their various allowances were attacked. These services were under the direct control and protection of the Secretary of State, so the Councils had neither jurisdiction nor responsibility regarding them. Proposals for drastic reduction in the pay and emoluments of these services, reduction in their number replacing the Imperial service by officers

of the provincial service, and abolition of some of the posts reserved for the Imperial services, were the common forms of attack in all the provincial Councils. The replies by the members of the Executive Council, who had no responsibility to the legislature, however cogent and convincing, merely irritated the popular representatives, who naturally considered themselves as the custodians of the country's interests and were anxious to play their proper role often without appreciating either the effect of their proposals on the efficiency of the administration or the inherent limitations of the constitution. Non-official members, as a rule, were keen on supporting additional expenditure on the transferred or nation-building departments such as education, sanitation, agriculture and industries, and the usual charge against the Ministers was that of inactivity in this respect and of inability to obtain adequate funds for their own departments. The members refused to realise that Ministers required time to survey their problems, and to get suitable schemes framed with the help of the expert advisers of Government. The difficulties of Ministers in some of the provinces as in Bengal and Bombay were considerably increased by scarcity of resources. Under the financial arrangement known as the Meston Award these provinces started with a heavy deficit.

Most of the provincial Governments were, therefore, faced with the unpleasant and unpopular duty of curtailing expenditure and imposing new taxes not for expansion of the work of the nation-building departments but for normal expenditure.

It may, however, be mentioned here, to illustrate some of the difficulties of Ministers under Dyarchy, that elected representatives were naturally reluctant to support taxation measures, unless the revenue was going to be earmarked for beneficial activities in the nation-building departments. Both sides of the Government had a common purse, and it was open to them to allocate

the revenues for expenditure according to the needs of the departments and requirements of administration. The Finance Member refused to violate this canon of sound finance. In Bengal, quite a big portion of the revenue raised by new taxation was required to strengthen the police and fight terrorism; these were most unpopular objects, though important from the administrative point of view. With a good deal of hesitation, members of the new legislatures faced the responsibility. In Bengal, a verbal assurance was given that only the minimum amount required to meet the normal budget deficit would be taken out of the additional revenue, and the balance would be allotted for development of the nation-building departments. In fact, however, the major portion of the revenue was exhausted in meeting the additional expenditure of the reserved departments. The taxation measures and the expenditure of the additional revenue in meeting the normal budget deficits added greatly to the unpopularity of the Reforms of 1919 and of those who helped its working. The extremist press and the Congress Party took full advantage of the popular feeling to justify the boycott of the Constitution and their subsequent policy of wrecking it.

In the 1923 elections, the Congress decided to enter the legislatures not to work the Constitution but to wreck it. There was a split in the Congress; a section led by Mr. C. R. Das and Pandit Motilal Nehru formed the Swaraj Party in it; the others under the leadership of Mahatma Gandhi were labelled "no-changers". They were opposed to the idea of Council entry, but being outvoted in the Congress submitted tacitly to the majority decision though they did not actively participate in the elections. The Swaraj Party captured quite a large number of Hindu seats in the Bengal and in the Central Provinces Legislative Councils and some seats in all other Councils. In Bengal, they had 47 seats in a House of 140, and formed the largest single group. With the help of nineteen Independents, they

succeeded in throwing out the entire budget demand of the reserved departments, which, however, had to be restored by the Governor. The Party was less successful against the transferred departments, but threw out the entire demand for the Ministers' salaries. The two Moslem Ministers (the third Hindu Minister having been already unseated in a bye-election) carried on for a few months without emoluments but had to resign when the second attempt failed to get the salary demand passed. The Constitution had to be suspended, and the Governor carried on the administration of the transferred departments with the help of the Executive Councillors. Another attempt to restore the Constitution had been defeated by a combination of the Swarajists and some of the disappointed Liberals, headed by an ex-Hindu Minister.

In the Central Provinces, the Swarajists having captured a large number of seats succeeded in suspending Dyarchy temporarily. But they had no success in any other province. Though they captured a few seats in all other legislatures, they could do little and Dyarchy had a very good trial in those provinces, especially in the Punjab and Madras. The tactics adopted by the Swaraj Party in Bengal in carrying out their policy of wrecking Dyarchy were hardly constitutional. The Party under Mr. C. R. Das was well organised. Its prestige was undoubtedly high because of the personal sacrifice of its leader who had given up his lucrative practice at the bar and become a whole-time worker in propagating the policy and principle of the Party. As Congress men and as non-co-operators, the Swaraj Party members commanded considerable influence with the student community, many of whom were induced to sacrifice their career and join the movement; most of them unfortunately soon became useless members of society from their lack of education and training for any useful career. A large number of student volunteers were, however, handy in enforcing the policy of the Swaraj Party. The control over the Corporation of

Calcutta with its enormous resources, reformed under the Calcutta Municipal Act of 1923, and the temporary unity between Hindus and Moslems, brought about by the Khilafat movement, secured for the Swaraj Party in Bengal a unique position and influence, though not complete electoral support. There was no other organised political party in the province. Individuals or a group of individuals, however worthy and intelligent, and whatever their record of services might have been, found it difficult to withstand the attack of a militant and well-disciplined party with no hesitation in adopting unclean tactics to attain its object. The whole political atmosphere of the country was demoralising and those trying to swim against the current and depending on constitutional methods were soon overpowered and exhausted. Towards the beginning of 1925, even some of the ardent supporters of Mr. Das realised the futility of the wrecking policy, and would have welcomed a change. But Mr. Das was too deeply committed to it, and his personality overshadowed all others. Towards the closing days of his life which ended in June 1925, he himself was veering round to a constructive policy and gave expression to his views in his presidential address at the Faridpur Conference. "I see signs of a real change of heart everywhere" he said to a representative of the *Statesman*.—"I see signs of reconciliation everywhere. The world is tired of conflicts and I think I see a real desire for construction and consolidation. Provided some real responsibility is transferred to the people, there is no reason why we should not co-operate with the Government. But two things are necessary—first, there should be a real change of heart, secondly, Swaraj in the fullest sense must be guaranteed to us at once, to come automatically in the near future." Mr. Das in his famous Faridpur address said: "A few suggestions may be made having regard to what is nearest to the hearts of the people of Bengal—(1) general amnesty of all political prisoners, (2) a guarantee of the fullest recognition of our

right to the establishment of Swaraj within the Commonwealth in the near future, and in the meantime till Swaraj comes, a sure and sufficient foundation of such Swaraj should be laid at once, (3) we on our part should give some sort of understanding that we shall not, by word, deed or gesture, encourage revolutionary propaganda and that we shall make every effort to put an end to such a movement."

While the Swaraj Party under Mr. C. R. Das and Motilal Nehru was trying to wreck the Constitution and partially succeeded in Bengal and the Central Provinces, Mr. Das was experiencing great difficulty in keeping the terrorists in Bengal in check. He defended some of the leading anarchists and originators of the movement in the Alipur Bomb case and saved them from the gallows. As a generous and dynamic personality who had sacrificed his princely income at the bar in support of his ideal and a leader who could make the Congress give up the barren policy of non-co-operation so ardently advocated by no less a person than Mahatma Gandhi, Mr. Das commanded the respect not merely of those who followed the principle of non-violence in the freedom movement but also of those who believed in and actively practised violence. Mr. Das was able to induce them to suspend their activities for the time being and to give him a chance of winning Swaraj by following the constitutional means of non-co-operation within the legislature. The British bureaucracy preferred this to violence and at times showed appreciation of Mr. Das's fight. Lord Birkenhead, as Secretary of State for India, paid high tribute to the discipline and organisation of the Swaraj Party and called upon it to direct its energy to constructive politics. Mr. Das was inclined to accept the invitation and outlined his proposals in the Faridpur speech. At the centre, the policy of barren opposition in theory gave place to that of responsive co-operation in practice. Pandit Motilal Nehru accepted a seat on the Sken Committee appointed to consider the

problem of obtaining a large number of suitable Indian candidates for the King's Commission and their training. The aim of the Committee was to devise ways and means to start an Indian Sandhurst. Lieutenant-General Sir Andrew Skeen was its Chairman.

Soon after entering the Indian Legislative Assembly with the avowed object of obstructing from within, the Swaraj Party tabled an amendment to a resolution moved by Dewan Bahadur Ranga Chariar in 1924. The amendment, moved by Pandit Motilal Nehru, ran as follows:— "This Assembly recommends to the Governor-General in Council to take steps to have the Government of India Act revised with a view to establish full responsible government in India, and for the said purpose, (a) to summon at an early date a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, a scheme of a constitution for India; and (b) after dissolving the Central Legislature, to place the said scheme for approval before a newly elected Indian legislature for its approval and submit the same to the British Parliament to be embodied in a Statute." The resolution led to the appointment of the Muddiman Committee in 1924. The Committee submitted its report which was considered by the Legislative Assembly in September 1925. Pandit Motilal Nehru moved an amendment to the effect that (1) Government should make a declaration in Parliament embodying such fundamental changes in the constitutional machinery and administration of India as would make the government of the country fully responsible, (2) a Round Table Conference, representative of all interests including the minorities, should be summoned to draw up a constitution which, after it had been considered by the Indian Legislative Assembly, should be placed before the British Parliament to be passed into an Act.

Mr. Vithalbai Patel was elected the first non-official President of the Assembly, and he helped rather than

hampered the working of the Constitution. In Bengal, when in 1926 the education budget was thrown out by the Swaraj Party, resulting in the serving of notices on various officers of the department who thus could not be paid their salaries, and in the unavoidable closing down of many educational institutions, the Council agreed to reconsider the budget demands and passed them without any opposition. In Madras, in 1928, the Justice Party Ministry could not have remained in power without the tacit co-operation of the Swarajist members. Thus the Party that entered the legislatures to wreck the Constitution settled down to work it except that it did not itself form the Ministry.

Development of Ministerial Responsibility

By 1930 there was again a reaction in favour of the Congress boycotting the legislatures; the Congress members resigned and withdrew from both the central and the provincial legislatures. The Liberals again got the chance of coming back to power and continued in power till the beginning of 1937. It will be interesting to study the working of the Montagu-Chelmsford reforms in these years in the provinces and at the centre with reference to certain specific points, *e.g.*, (1) the relation of Ministers with the Governor, (2) the relation of Ministers to one another, (3) the influence of party on the Ministry, (4) the attitude of the permanent officials to the Ministry and the effect of the new system on the public services generally, (5) the control and supervision of the Secretary of State and of the Government of India over the provincial Governments.

The relations of Ministers and Governors may be described as generally quite harmonious. Governors as a rule were helpful to their Ministers, and seldom, if ever, tried to over-rule them. In Bengal, between 1921 and 1936, it is difficult to refer to a single instance when there was any serious misunderstanding between Governor and Minister. The first Ministry has to its credit the

difficult and democratic Calcutta Municipal Act of 1923, by which the Corporation of Calcutta was handed over to popular control and official check or supervision was reduced to the minimum. The resources and the executive machinery of the Corporation of Calcutta were captured by the Swaraj Party and exploited to the full for political purposes and propagation of the Party principles. Important appointments including those of the Chief Executive Officer and Deputy Chief Executive Officers were distributed as rewards for political services to members of the Swaraj Party, but it was not possible for Government to interfere without violating the spirit of the Calcutta Municipal Act, and Government not only did not interfere but approved some of these appointments which were subject to their sanction almost without objection. The political department of the Government had no reason to be pleased with these appointments, and would have preferred not to sanction them; but the Governor, appreciating the difficulty of the transferred departments in conforming always to the opinion of the police or political department, backed the Ministers in their policy of non-interference with the autonomy of the Corporation. The appointment of Mr. Subhas Chandra Bose as Chief Executive Officer, of Haji Abdur Rashid Khan as Deputy Chief Executive Officer, and of Babu Abinash Chandra Chakravarty as Assessor of the Calcutta Improvement Tribunal, may be cited as instances. Throughout the history of the administration of the Corporation of Calcutta under Dyarchy, there were several occasions when Government interference regarding appointments, distribution of contracts, and management of the primary schools by the Corporation, could have been fully justified. But Government always preferred to err on the side of leniency and tried to uphold the autonomy of the Corporation even at the risk of being adversely criticised by a section of the public, the Government of India and the Secretary of State. This would not have been possible

but for the help and co-operation of the Governor and of the reserved side of Government. It was only when the Corporation began to indulge in open eulogy of political murders and pursued the policy of appointing persons of doubtful ability and questionable character as teachers of primary schools, and when it was discovered that some of these schools were being utilised for propagation of anti-British feeling and anti-Government slogans, that suggestions were made for more strict Government control, and if necessary, for supersession of the Corporation. These measures were seriously urged from 1930 to 1933 by the police department and the Central Government in the interest of law and order, because the political atmosphere in Bengal, as in the rest of India, was greatly disturbed by the civil disobedience movement and political assassinations. The Ministry was quite prepared to discharge its responsibility in maintaining peace and tranquillity in the province, but did not subscribe to the view that supersession of the Corporation would be conducive to that end. On the contrary, according to the Ministry, it would have alienated the sympathy and support of the educated Indian community from Government at that critical moment, and their action would have been interpreted as an attempt to suppress local self-government and re-establish official control over the civic administration of the second city in the Empire. Educated Bengal would have taken it as a serious infringement of their civic rights and an insult to the whole intelligentsia of the country, so that instead of improving the political atmosphere supersession of the Corporation would have done great harm. In this view the Ministry was fully supported by successive Governors, and the idea of superseding the Corporation was dropped. As an alternative, Government suggested a non-official committee with the concurrence and co-operation of the Corporation to enquire into the working of the Corporation generally so that both Corporation and Government might have an opportunity

of ascertaining facts and removing defects. But on political grounds the Corporation refused to co-operate, and Government had no alternative but to introduce a measure prohibiting the appointment, without the sanction of Government, of persons convicted of subversive offences and providing for surcharge against the sanctioning authority of any expenditure of Corporation revenues not authorised by the Act.

Another important instance in which the Ministry received the full backing of the Governor was the question of a grant to the University of Calcutta in 1922 to enable it to meet a deficit which was alleged to have been brought about largely by expenditure beyond its resources for expansion and maintenance of the post-graduate department. Public opinion was sharply divided, and this division was fully reflected in the Council. The majority of the supporters of the Ministry favoured the withholding of the grant unless the University was prepared to curtail its expenditure, publish its budget and assure Government that there would be no further new expenditure on the expansion of the post-graduate department till the finances of the University were set in order. The University was in imminent danger of being forced to close down, unless Government agreed to come to its rescue. The University was, however, reluctant to accept a conditional grant as that would have involved, in its opinion, an infringement of its autonomy, and according to it Government had no right to interfere, even indirectly, in the administration of the University. The Governor was its Chancellor. He was anxious to uphold its dignity, prestige and independence, but he appreciated the difficulty of the Ministry in agreeing to a subsidy in the absence of some assurance how the money would be spent, and so supported the Ministry without allowing it to interfere unduly in the affairs of the University.

From the beginning of Dyarchy in Bengal, there was a natural desire on the part of the Ministry to

Indianise the teaching appointments in the Calcutta Medical College and in the Campbell Medical School, as well as to throw open some of these appointments to members of the medical profession amongst whom there were many eminent physicians and surgeons. This policy could not be given effect to without releasing some of the posts hitherto reserved for the officers of the Indian Medical Service. Here the Ministry had to fight vested interests, and it had very little support from the Surgeon-General and other superior officers of the department. The Director-General of the Indian Medical Service had obligations to members of the Service, of which he was the head, and was expected vigilantly to guard its interests. It was difficult to count on the sympathy of Whitehall unless one was powerfully backed by the Governor-General and the Governor. It must be admitted, however, that in this policy of Indianisation of teaching appointments in medical institutions, and appointment of members of the independent medical profession as visiting surgeons and physicians, and later from 1932 onwards in their appointment as professors and teachers in the Medical College and in the medical schools, the Ministry received all reasonable support from the Governor and co-operation from the Surgeon-General. This resulted in reduction of the number of Indian Medical Service officers serving in Bengal in civil employments and improvement in the prospects of Provincial Service Officers in relation to those superior posts; great opportunities were then offered to competent members of the independent medical profession to hold teaching appointments in medical institutions.

The terrorist outrages in Bengal, between 1930 and 1934, had an adverse effect on the entire administration. Officers had to take special precautions for their safety, and their movements were greatly restricted. A large number of Bengali youths were arrested under the Criminal Law Amendment Act and the Terrorist Outrages Act, and detained indefinitely. Dacca, the principal city and centre

of education in Eastern Bengal, was the scene of regrettable incidents including the murder of the Inspector-General of Police at the gate of the Government Medical School. About 21 students of the institution were suspected of sympathy with terrorist conspiracies and some of them to be actively implicated in them. The Superintendent of the school proposed that they should all be rusticated. The Minister in charge of the medical department considered it unreasonable to punish so many students merely on suspicion or on police allegations. The Surgeon-General and the Secretary of the local self-government and medical department, a European I.C.S. Officer, strongly supported the proposal. The Superintendent, who was also the Civil Surgeon of Dacca, was a senior I. M. S. officer and a good disciplinarian. The police department urged drastic measures. The Governor, however, supported the Minister, and the proposal was dropped. Instances can be multiplied to show that the Ministry invariably received the full backing of the Governor on many critical occasions, and that averted constitutional crises.

In this connection, it should be noted that in some of the provinces Ministers felt that they were not being taken into confidence on all matters, and some Governors, at least in the earlier stage of Dyarchy, continued to hold separate meetings of the Executive Council and the Ministers. Sir K. V. Reddy, who was Minister in Madras, and Sir C. Y. Chintamani, Minister of the United Provinces, commented on this before the Muddiman Committee. In Bengal, there were only joint meetings during the first three years; then the system of holding separate meetings was revived, but it was finally dropped in 1931. Ministers and Members would note on all the original files circulated to them before any important matter was brought up for decision at the joint meeting. It is, however, to be noted that some cases of the political and police department were disposed of between the Member in charge of that department and the Governor unless they involved

important questions of policy which might come up before the legislature for discussion and criticism or require new expenditure. At least from 1931 onwards, the Bengal Ministers never felt that important questions affecting the reserved side of Government were really kept away from them. Cases involving new expenditure were always placed before the joint meeting for decision. In Bengal both sides of the Government tried to share each other's responsibility without any distinction or reservation.

Ministers did not function on the principle of joint responsibility but as individuals responsible to the House, though there were occasions when a Minister resigned because his colleague decided to go out on a political or administrative issue. Sir C. Y. Chintamani resigned his office of Minister of the United Provinces on the ground of disagreement with the Governor over an appointment; his colleague Pāṇḍit Jagatnarayan resigned along with him. On the contrary, however, there are several instances when individual resignations did not involve dissolution of the entire Ministry, which was reconstructed by the appointment of new Ministers. This happened in Madras, when two of the Ministers resigned on the question of co-operation with the Simon Commission in 1927, and also in Bengal. The Hindu Minister in Bengal resigned in 1930 on the issue of the Bengal (Rural) Primary Education Bill and the Ministry was reconstructed by the appointment of a new Hindu Minister. But generally the relations amongst the Ministers were quite harmonious, and they often tried to pull together and except on extreme communal questions were seldom divided amongst themselves. In the Punjab and in Bengal, where communal questions were often acute, Ministers could stand united even against extreme communal pressure and act as a Cabinet. Hindu feeling in Bengal about political prisoners and Sikh and Hindu feeling in the Punjab over the Gurudwara problem, which was the main inspiration of the Akali agitation in the

province, often ran high. The Hindu and the Sikh Ministers in these two provinces, though subjected to severe communal pressure, worked in close co-operation with their Moslem colleagues and the European and Indian members of the Executive Council.

The position of the Party in power varied from province to province. In Madras, the Justice Party was well organised and systematically followed the lead of the Chief Minister, an office created not by Statute or official recognition but by convention, and accepted both by Party and Governor. It was a party formed with a view to fight the Brahmins and to secure political power and influence for the non-Brahmins. The policy of the Party was influenced accordingly, and the Ministry did its best to consolidate its position by the distribution of patronage and by giving appointments to non-Brahmin candidates. This policy was quite successful in increasing the influence and cohesion of the Party, although gradually it produced discontent in the Party itself, leading to the secession of some of its members by 1928 who formed themselves into the Unionist Nationalists. This undermined the influence of the Party and made the Ministry in 1928 more dependent on the official bloc than on its own strength. The Ministry in Madras, however, tried throughout to control the Party instead of yielding to its extravagant demands. The success of the Justice Party Ministers in Madras was largely due to the influence and personality of the "Chief Ministers", the Raja of Panagal and later the Maharaja of Bobbili.

In Bengal, the party system in the proper sense of the term did not develop till after the introduction of the 1935 Act. Most of the supporters of the Ministry were their personal adherents, and they seldom acted on party principles. An attempt was made in the first Council to consolidate the supporters of the Ministry, Hindus, Moslems, and Europeans, through the membership of a common political club, known as the Constitutional Club,

where the members of the Cabinet and the supporters of Government used to meet and discuss freely legislative and administrative problems. The budget as introduced in the Council and important schemes for the expansion of education, irrigation, sanitation, and industries in the province were usefully considered in the Constitutional Club, an admirable plan for the growth of normative constitutional conventions. But this system was short-lived and did not survive the first Council. In the second Council, the majority of Hindus were Swarajists or persons who had Congress leanings and were under the direct influence of Mr. C. R. Das; the Moslem members were divided, and they supported or opposed the Moslem Ministers (there was no Hindu Minister) on personal grounds. Thus, the attempt to build up a political party on non-communal basis by the Ministers did not meet with much success, although the Opposition was well organised and was composed both of Hindus and Moslems. The supporters of the Ministry, with rare exceptions, did not try to bargain for their votes. It has to be observed, however, with regret that the process of wrecking and working Dyarchy provided an ample opportunity for political corruption, and charges and counter-charges of such corruption were freely made by both sides. Fortunately, it was a passing phase in Bengal parliamentary life and disappeared as soon as the game of Ministry baiting was over with the withdrawal of the Swaraj Party from the legislature in 1930. In the Legislative Councils of other provinces, except in the Central Provinces, the Ministries had comfortable margins of votes in their favour, and there was not much room for their supporters to bargain.

The attitude of the permanent officials to the new Constitution was on the whole helpful. They kept aloof from party politics. The changes in the political condition of the country brought about by the Reforms of 1919 were considerable. For the first time the electorate was invested with political power, and it realized

its ability to influence, though in a limited sense, the administration of the country. The budget of the transferred departments had to be passed by the House; the Governor had no right to certify it as he had of the reserved departments, but in case of the total rejection of the budget he could sanction only that amount which was essential to keep the departments going. Politicians came into power as Ministers through the ballot box and support in the legislature. They were seldom men with administrative experience, though they often possessed political imagination and a general knowledge of the problems of the country. But Ministers had their political commitments and could not always act with the same independence as members of the permanent services, who were not merely officers of Government but were also administrators, accustomed to act on their own initiative and responsibility. Members of the permanent services were trained under an entirely different tradition from that of parliamentary democracy, and one should not have been surprised had they shown some intolerance for criticism of Government policy or Government action and considered meetings of the Legislative Council as a waste of time and energy or were inclined to object to some of the proposals of Ministers as administratively unsound. But, on the whole, the permanent officials showed much greater elasticity of mind and adaptability to the new circumstances and environments than might have been expected. They were quite helpful to Ministers, appreciated their view-points and their difficulties as politicians, and did their best to implement the policy laid down by Ministers. Secretaries were, as a rule, loyal to Ministers. This was testified by several Ministers and ex-Ministers before the Muddiman Committee. Instances of Secretaries disagreeing with Ministers and of taking cases to the Governor for decision were extremely rare. Ministers generally disliked the practice of Secretaries seeing the Governor on departmental

business and the suspicion that the interview was being used to report matters over the heads of Ministers was seriously entertained in some cases, but it is difficult to say how far the feeling was justified. Cases of honest difference of opinion between Ministers and Secretaries were mostly settled through personal discussion, and the intervention of the Governor was seldom necessary. In such cases, personal factors were always important, and much depended on the personality of the Governor, the Minister and the Secretary.

The Central Government's Control

The Central Government's control over the Provincial Governments may be generally divided into three categories, *viz.*, financial, legislative and administrative. Under the Reforms Act of 1919, control under all these heads was considerably relaxed but by no means withdrawn. The control was exercised by the Central Government in most cases on their own behalf and in some cases on behalf of the Secretary of State for India. It will, therefore, be wrong to assume that the provinces under the Montagu-Chelmsford reforms were granted effective autonomy. All that can be said is that under the Reforms Act of 1919 there was greater decentralisation of power and responsibility, and the control or direction exercised by the Central Government was always in the nature of advice rather than mandate. In practice, however, the provinces were still under the triple control of the Centre, though they were allowed a limited freedom in certain matters.

The financial arrangement between the Central and the Provincial Governments before the Reforms was based on a system under which the Central Government shared the proceeds of certain heads of revenues with the Provincial Governments on the principle of estimated needs of the provinces, the Government of India disposing of the

surplus. This system may be described as one of "divided heads", and it necessarily involved greater control of provincial finance by the Government of India. It was abolished by the Government of India Act of 1919. The scheme introduced was that certain heads of revenue which were more of a local nature such as land revenue, irrigation, alcoholic excise, forests, court fee stamps, registration fees, etc. were allotted entirely to the provinces, while the Government of India retained salt, customs, stamp duties, income-tax, receipts from railways and from posts and telegraphs, etc., revenues which were more of an all-India character. The Provincial Governments were also allowed to raise taxes from certain sources mentioned in the schedule of the Government of India Act, and these came to be known as scheduled taxes; the residuary power of taxation remained in the hands of the Government of India. The fiscal relations between the Central Government and the Provincial Governments were laid down in the rules made under the Act. These rules were known as the Devolution Rules. The new taxes which a province might levy were not specified in these Rules. Previous sanction of the Governor-General in Council imposing new taxes, (except those mentioned in the schedule) or taxes affecting the public debt of India or the customs duties or any other central tax, was necessary under the Act. The Devolution Rules also required the Provincial Governments to make fixed annual contributions to the Central Government—contributions which in case of emergency could be increased with the sanction of the Secretary of State. In fact, however, these contributions were never enhanced; on the other hand, they were abolished in 1927-28. Though with the establishment of responsible government in certain spheres of provincial administration the control over the expenditure on the transferred services had definitely passed over to provincial legislatures, the Secretary of State did not completely divest himself of responsibility for such expenditure. It is to be noted

that no proposal for appropriation of funds in a province could be made except on the recommendation of the Governor. The Devolution Rules required that previous sanction of the Secretary of State should be obtained for proposals of expenditure in respect of the transferred subjects before they were included in the demand for grant, such as for the creation of permanent appointments normally held by members of an all-India Service.

In the reserved departments the expenditure was under the control of the Secretary of State who had relaxed his authority by delegation of powers conferred on him by the Act. This delegation used to be made by executive orders in the shape of a Provincial Audit Resolution. Here also the pay and allowances of the all-India Services, and other expenditure such as the expenses of Governors, the revision of establishments involving an annual expenditure on irrigation and other public works estimated to cost more than Rs. 50 lakhs, were subject to the sanction of the Secretary of State. The Government of India in practice were the controlling authority, and they forwarded the proposals of the Provincial Governments to the Secretary of State with their recommendations and criticisms. Under the Government of India Act of 1919, it was no longer necessary to submit the provincial budgets to the Secretary of State for sanction before they were presented to provincial legislatures, but the Secretary of State controlled provincial solvency by controlling the provincial borrowing capacity. The provinces after 1920 were granted the privilege of raising loans in the market instead of borrowing through the Central Government as they used to do before. But no loan could be raised by any Provincial Government under the Act of 1919 outside India without the sanction of the Secretary of State and within India without the approval of the Government of India, and their borrowing powers were limited to certain specified purposes, *e.g.*, famine relief, capital expenditure on works of lasting

public utility, etc. The Central Government could also control the finances of provinces by insisting on the maintenance of certain minimum balances to their credit beyond which they were not allowed to withdraw, and this gave an indirect, though very effective, control to the Government of India over the expenditure of provincial finance.

In matters of legislation, previous sanction of the Government of India was required under the Statute before a Bill could be introduced in the provincial legislature, with the exception of a small specified class of legislation. This provision applied not merely to provincial Bills but also to the amendments of such Bills.

In the sphere of administration, though the Central Government had no direct power of interference with the transferred subjects in the provinces, they still retained the power of controlling the all-India Services attached to the transferred departments and had the statutory right of being supplied with information by the provinces regarding the transferred subjects, as in the case of reserved subjects, and the Central Government's right of maintaining a general control and supervision over the entire administration of the country left the authority of that Government to some extent unimpaired and effective, if they wanted to exercise such control. In practice, however, the Central Government never, as a rule, interfered with the administration of the transferred departments. For instance, even when the policy of the Calcutta Corporation and some other local bodies in Bengal became actively anti-British and the Government of India on administrative grounds would have preferred action being taken against those bodies by the Provincial Government, they only asked for information and indicated the danger of a policy of non-interference regarding the affairs of such local bodies, but they never suggested action against them and left the matter entirely to the discretion of provincial Ministers who had to decide on their line

of action after taking into consideration public opinion and the views of their supporters in the legislature.

As regards the reserved departments, the Central Government tried to maintain a close supervision over such subjects as police, the functioning of the criminal intelligence department, and the maintenance of law and order generally in the provinces. The central Intelligence Department also acted in co-operation with the provincial intelligence branch of the C.I.D.

In addition, the Government of India acted as the co-ordinating authority amongst different Provincial Governments regarding the management and control of several institutions and organisations in which the provinces were jointly interested such as the Government of India Research Institute, the Agricultural Institute at Pusa and Coimbatore, the policy of development of communications as outlined by the Road Board. After the introduction of the Reforms, the Government of India organised conferences of provincial Ministers for the co-ordination of efforts and evolution of a uniform all-India policy in some of the transferred subjects, and this method proved very useful.

CHAPTER II

INDIA AND THE BRITISH COMMONWEALTH

THE designation British Commonwealth of Nations is not of modern origin, but of modern application. The expression was used by the late Lord Rosebery in 1884. At present, the British Empire includes the self-governing units and the dependent parts. Great Britain and the Dominions form, within the Empire, a group known as the British Commonwealth of Nations. The expression Dominion owes its origin to the Colonial Conference of 1907, and it is "chosen as a means of distinguishing the parts of the Empire enjoying responsible government from the dependent Empire."

Section 11 of the Statute of Westminster 1931 provides that notwithstanding anything in the Interpretation Act 1889 the term "colony" will not in future Acts include a Dominion or any Province or State forming part of a Dominion. The word Dominion means the following Dominions: the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland. The Dominion of Canada and the Commonwealth of Australia have federal forms of government; the Canadian provinces and the Australian States enjoy responsible government within federal limits, "the principles applicable to the Dominions in general normally apply to them also, whether in the sphere of executive government or legislation or judicature." The Union of South Africa is a unitary State with a partiality for federal sentiment; the other Dominions are purely unitary States.

The British Commonwealth of Nations includes the mass of territories of the King which fall into "co-equal and autonomous sovereignties". It is often used as synonymous with the term British Empire. The Constitution Act of the Irish Free State 1922 makes no distinction

between the British Empire and the British Commonwealth of Nations. But to understand the constitutional issues of the British Empire, the significance of the expressions British Commonwealth of Nations and Dominion must be grasped fully and effectively. The report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 declares in respect of the British Empire that "free institutions are its life-blood; free co-operation is its instrument; and peace, security and progress are among its objects." This is applicable to the concept of the Commonwealth. It will be illogical to apply the above description to the dependent parts of the Empire, although a colony may, with the growth of conventions, assume the character of a Dominion. Sir Robert Borden describes more truly the British Commonwealth as an Empire-Commonwealth. This Commonwealth has developed not from design but through mutual trust and co-operation. The different units have diverse communities, but there is amazing unity in striking diversity and there is autonomous governance to the fullest extent within the continued bond of co-operation. It is, therefore, not true to say that "the British Empire of 1914 has now become the British Commonwealth of Nations," nor would it be a correct juridical characterisation that the British Commonwealth may be regarded as "a League of Nations owing a single allegiance and possessing international relations that are still in a state of development."

Characteristics of the Commonwealth

The characteristics of the Commonwealth are parliamentary government, the supremacy of civil power, the rule of law and the protection of racial and religious minorities. But the unity of the Empire is preserved in the following ways, as provided for in the preamble to the Statute of Westminster 1931:—

- (1) The association of the members of the British Commonwealth of Nations is free;

- (2) members of the Commonwealth are united by a common allegiance to the Crown;
- (3) any alteration in the law touching the succession to the Throne or the Royal Style and Titles shall require the assent of the Parliaments of the Dominions and the Parliament of the United Kingdom.

The supremacy of the Imperial Parliament is affected by the Statute of Westminster, but it is not deleted. The Parliament of the United Kingdom can enact law for the Dominions only at their request and with their consent. Even the Statute of Westminster was enacted in the Parliament of the United Kingdom at the request and with the consent of the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

Equality of status, so far as Britain and the Dominions are concerned, is said to be the root-principle. This equality of status presupposes that every Dominion Government is entitled to exercise every function of national and international right. The essential principle of the Empire-Commonwealth is "perfect autonomy of the parts and unity of the whole." It is obvious that the concept is contrary but not contradictory.

The Dominions may rank as sovereign States, but the unity of the Empire is not, and cannot be, ignored. It is true that before the Great War of 1914-18 the Dominions established their distinctive existence, but the bond of the Empire was pronounced. The Dominion negotiators might negotiate and sign treaties; they might have definitely established that in matters of commercial interest special treaties could be negotiated for any colonies which required them without damaging the interests of the other parts of the Empire, but Imperial unity was valued both in form and in spirit. The events of the War of 1914-18 brought about remarkable changes in the concept of Dominion Status. The Dominions were given direct repre-

sentation in the Imperial War Cabinet in 1917-18; they were represented in the Peace Conference, and they put their signatures on behalf of the Dominions whereas the British delegates signed for the British Empire. Sir R. Borden of Canada secured the great point that the treaty must be ratified for the Empire only after it had been approved by the Dominion Parliaments. The Dominions earned the right to be members of the League of Nations and also the right to stand for election as non-permanent members of the Council. The Dominions were granted the rank of distinct States under the Statute of the Permanent Court of International Justice (1920).

In course of time, the Dominions obtained further rights which threatened Imperial unity. The Imperial Conference of 1923 held that a treaty which affected one part of the Empire only should be signed by a representative of that part and should be ratified on its request. The Imperial Conference of 1926 clearly enunciated that treaties should reveal clearly for what parts of the Empire they were concluded and should be signed by representatives of those parts and ratified on the request of Governments of such parts as desired this to be done and that no part of the Empire might place upon any other part any active obligation without its consent.

The Position of India

Amongst the overseas possessions of the British Crown, there are territories which are not annexed to its dominions and those which are integral parts of the British Empire. Mandatory Powers under the League of Nations or Protected States are not properly speaking British territories. They are dependencies of the Crown but their inhabitants are not full subjects of the British Crown. The Protectorate, however, can be transformed into a Crown Colony through the increase of the extent of responsibility of the protecting Power in internal administration. In the British

territories, there is the classic distinction between settled and conquered or ceded colonies. Canada was partly settled and partly ceded; Australia and Newfoundland stood on the basis of settlement; South Africa was partly ceded and partly conquered; there was settlement and cession in respect of New Zealand. The Irish Free State stands in a special category.

India is partly ceded and partly conquered. It is the right of a settled colony to enjoy responsible government. The settlers carry with them the law of England, and they continue to enjoy all the public rights as subjects of the British Crown. The prerogative of the Crown towards them is limited as they are entitled to an elected assembly, legislating on all matters of domestic concern. A country conquered by British arms becomes a dominion of the King in the right of his Crown; it becomes subject to the Parliament of Great Britain. The laws of a conquered country remain in force until they are altered by the conqueror. Its inhabitants are rightless as against the Crown; the Crown may make what arrangements it pleases. Once the representative legislature is granted to a conquered colony, the Crown can no longer legislate or impose taxation by prerogative unless such power is reserved. Thus the distinction between a settled colony and a conquered colony disappears in respect of public rights and duties.

India occupies an anomalous position. It is not a colony in the British sense of the term; it does not stand in the list of Dominions. India stands as a distinctive unit of the British Empire; it is crawling towards membership of the British Commonwealth of Nations. The Imperial War Conference of 1917 resolved that the constitution of the Imperial Conference should be so modified as to permit India to be fully represented in the Imperial Conference of 1918. India took her place in the Imperial War Cabinet of 1917-18. The Conference of 1917 placed on record their view that "any readjustment of the constitutional relations of the component parts of the Empire, while

thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same; should recognise the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations; and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine." The decision was definite, and India was recognised as an important portion of the Imperial Commonwealth. The Imperial Conference of 1921 did not follow the task of readjustment of the constitutional relations of the component parts of the Commonwealth. It was left to the Imperial Conference of 1926 to declare that the members of the Commonwealth were autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs. Although India earned full representation in the Imperial Conference, its decisions were evidently not meant for India's benefit. The position is untenable, the more so when we find that India, on the same footing as the Dominions, was given a separate membership of the League of Nations in 1919 and a distinct place in the negotiation of the Treaty and its signature. India is given distinct representation on the Labour Organisation of the League. In the Peace Conference of Paris after the War of 1914-18, it was adjusted that Powers with general interests, *viz.*, the United States, the British Empire, France, Italy and Japan were to attend all sessions and Commissions, and that Powers with special interests, including the Dominions and India, were to attend sessions at which questions concerning them were discussed. The policy of Lloyd George was formed after consultation with the Empire Delegation. This status was preserved in the mode of signature of the treaty of peace.

In 1941 through necessities born of the War India was represented in America by Sir G. S. Bajpai as Agent-General for India, a position nearly analogous to that of an ambassador. In 1941, Sir A. Ramaswami Mudaliar represented India in the British War Cabinet and on the Pacific War Council in London. Dominion Status is thus granted without the virtue of Dominion autonomy.

India, it is said, has the fiscal convention to fix its fiscal policy as desired by the Indian Government and legislature free from British control; it can purchase stores without regard to British interests; there is an Indian High Commissioner in London; there is need for ratification of international agreement in India. But important facts cannot be overlooked. For external purposes the Government of India is no more than an agency of the Government of the United Kingdom; for internal purposes the traditions of ministerial responsibility cannot work out within the framework of the present Constitution Act, unless the Governor-General or the Governor wills it so. The tragedy is that India sits in the Imperial Conference to fashion the status of the Dominions as a disinterested participant. That anomaly should go.

The promise of Dominion Status as the goal is neutralised by the utterances of Mr. Amery, Secretary of State for India, in the Commons and outside. His theme was propounded on many occasions, and it was this. England can look back with justifiable pride to the romance of past achievements; England has always looked forward to the day when India shall administer her own affairs and control her own destiny. Over a wide field responsible government exists in India. For the rest Great Britain is pledged to help India to attain as soon as possible after the war the same position of freedom and equality as is enjoyed by the Dominions. But England cannot forget her pledge to the minorities and to British interests in India. Moreover, internal unity, generally accepted as the constitutional frame-work upon which self-government must

rest, can only come by free agreement of those immediately concerned. He raised doubts in Indian minds when he emphasised the Balfour formula of distinction between the status and functions of the Dominions—a formula which did not receive confirmation in the Imperial Conference from 1926 to 1930. Accordingly, India patiently waits for an unqualified declaration from the British Government as to the status of India.

It is too late in the day to argue that the grant of responsible government could be withheld because of the differences of language, race and creed prevailing in India. Lord Durham's recommendations in the nineteenth century were made in spite of all these differences in Canada which had practically led the movement for Dominion autonomy in the British Commonwealth. It is equally untenable that Dominion Status, to be effective, is to be achieved through evolution and cannot be attained by a stroke of legislation. The Irish Free State got it by an enactment and not by evolution. It is perfectly logical that the full stature of Dominion nationhood cannot be attained by a comprehensive Statute, essentially rigid. But India, at present, is far removed from Dominion Status, although it has the cloak of a Dominion as an international unit. If "there is nothing static about the British Empire", India should not be denied opportunities of playing her part in the Commonwealth of Nations. "In labouring for our own country on the right principle", wrote Mazzini, "we labour for humanity. Our country is the fulcrum of the lever we have to wield for the common good." Indians are, therefore, impatiently searching for a solution of the Indian constitutional problems.

India and the Crown

It is held that the Crown is one and indivisible throughout the Empire and the Commonwealth. The Statute of Westminster, in the preamble, recites that

members of the Commonwealth are united by allegiance to the Crown. It is argued that the Crown being the treaty-making party for the Commonwealth, all Dominions are bound by the terms of all treaties. The Locarno Treaty of Mutual Guarantee 1925 provides that "the present Treaty shall impose no obligation upon any of the British Dominions, or upon India, unless the Government of such Dominion, or of India, signifies its acceptance thereof" (Article IX). That is in accord with the constitutional position of the Dominions. But the indivisibility of the Crown may be strictly construed so as to signify that with such reservation in a treaty the Dominions would be freed from positive obligations but would be bound passively. Accordingly, the advocates of Dominion autonomy suggest that the intra-Commonwealth relationship is cemented through personal union with the King and that the bond is that all the Dominions have the same King, the divisibility of the Crown being recognised in practical politics. The position is strengthened by the following factors: (a) the Statute of Westminster accepts the constitutional position recognised by the Imperial Conferences held in 1926 and 1930; (b) the freedom of the Dominions from control by Great Britain in the conduct of foreign relations; (c) the request and consent of the Dominions as conditions precedent to any Imperial Act extending to the Dominion.

It is significant to note that the Inter-Imperial Relations Committee of the Imperial Conference of 1926 definitely stated: "In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government." The Conference

of 1929 recognised that it was not proper for the Crown to issue any instructions to the Governor-General as to reservation of Bills; he must reserve only on ministerial advice or on some other constitutional ground. The Conference of 1930 accepted this recommendation. The question of disallowance was obsolete. The position is this that the Dominion establishes itself in touch with the Crown and that the Crown is to act on the advice of the Dominion Ministers. The Statute of Westminster establishes the constitutional position of equality in external affairs where the Crown will be acting for the Dominion as distinguished from the Crown of the United Kingdom. All this points to the divisibility of the Crown. The same King has different facets; he acts on the advice of the British Ministers with regard to the United Kingdom and the dependent parts of the British Empire; he acts on the advice of the Dominion Ministry with regard to the said Dominion. "The whole aim and the whole result of the Conferences of 1926, 1929 and 1930" has been the substitution of the British Monarch for the British Government in the Dominions and the establishment of personal union with the King functioning at the will of the Dominion Government and as "a symbol and emblem of the unity of the British Commonwealth of Nations."

The Commonwealth is based on "free association". Though every Dominion must remain the sole judge of the nature and extent of its co-operation, it was believed that no common cause would be thereby imperilled, because the British Empire is "not founded upon negations" but on "positive ideals". The British concept is an emphasis on expediency; the Continental view is one of absolute right. If a Dominion desires to secede, it would not be restrained by arguments of legalists. It is not a sound constitutional theory that drastic revision of structural organisation of the State should derive sanction from the constituent power of the Constitution Act. To change a monarchical into a republican form of government by

way of seceding from the Empire Commonwealth is a fundamental change which should not be adopted through constitutional forms. A comprehensive structural reorganisation should be effected with the assent of a constituent assembly, especially convoked for that purpose. Prof. Laski argues that it is better that such effort should be plainly revolutionary, because "atheism, after all, should not be preached from the pulpit of a cathedral". It is, therefore, not a constitutional issue if the Statute of Westminster gives a member of the Commonwealth the right to secede. The preamble shows that such a right cannot be enjoyed by unilateral action; it requires ratification by the Imperial Parliament. But if a member feel the urge to secede, it is better that he should revolt and secede rather than submit a measure of secession, duly passed by the Dominion Parliament, for the assent of the King who, on the basis of Dominion conventions, will not refuse assent, if pressed by the Ministry. The argument of General Smuts that the King could not, with due regard to his duty, assent to a measure of a Dominion Parliament seeking to destroy the connection with the Crown is undoubtedly theoretical; the contention of the school of Hertzog that the Dominion has the right to secede is not constitutional as the Commonwealth is based on the ideal of "free co-operation"; and it is not governed by speculative and abstract principles. Prof. Keith believes that the Statute of Westminster does not give the right to secede, but he writes:- "If the Irish Free State should determine to declare itself a Republic, the British Government would not make war to prevent it."

It is, however, no longer open to dispute that the effect of the Status of the Union and the Royal Executive Functions and Seals Acts, which were passed in South Africa in 1934, is to give validity in law to the triple doctrine of—

- (1) The divisibility of the Crown,
- (2) The right of neutrality, and
- (3) The right of secession.

The right of secession and neutrality was in fact recognised by Mr. Neville Chamberlain when the Treaty of 1938 released Eire from obligations to Britain in case of war. The Dominions feel handicapped in the matter of severing allegiance to the Crown in external affairs primarily for the reason that secession can only be imperfect if it is not recognised by the British Parliament. In British law, all persons born within His Majesty's dominions and allegiance are British subjects. The Irish Free State could by the Irish Nationality and Citizenship Act 1935 sever allegiance as the bond of connection between Irish nationals and the Crown. But Irish citizens outside the Free State are British subjects. "The Dominion laws outside Dominion territory though given extra-territorial effect by the Statute of Westminster 1931, Section 3, cannot override competing British legislation. Thus secession can only be completed by Imperial action."

The authority of the Crown over India was formerly exercised through the East India Company. Under the Government of India Act 1858, the government of India was transferred to the Crown acting through a Secretary of State. Queen Victoria was proclaimed as Queen Empress of India in 1877 under the Royal Titles Act 1876. Under the Government of India Act 1919 the government of India was vested in the Governor-General in Council, but the Central Government continued to be an agent of the Secretary of State as he had powers of superintendence, direction and control over all acts, operations, and concerns which related to the government or revenues of India. The controlling influence of the Secretary of State installs the authority of the British Government in Indian affairs, and to that extent it waives the prerogative of the Crown. The dominion and authority of the Crown in India is derived partly from the Imperial Statute and partly from prerogative. The prerogative of the Crown, unless expressly limited by Statute, is as extensive in the colonial possessions as in Great Britain. India being a conquered

country, statutory rights are granted by the grace of the Crown. The property and revenues of India must be deemed to inhere in the Crown, subject to specific statutory enactment.

The need for creation of autonomous provinces to be federally united under the Crown inaugurated the return to resumption of powers by the Crown. Under the Government of India Act 1935 the government of India was declared to be exercisable by His Majesty the King-Emperor of India, except in so far as may be otherwise provided by or under the Act or as directed by His Majesty. Clause 2 of Section 2 of the Act declares that the rights, authority and jurisdiction belonging to His Majesty the King-Emperor of India include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State with or without his Council, the Governor-General with or without his Council, any Governor or local Government.

Under the new Act, the Governor-General of India and the Governor of a province are appointed by His Majesty by Commission under the Royal Sign Manual. The Governor-General of India or the Governor of a province is not a Viceroy, that is, he is not a general agent of the Crown with power to exercise all the prerogatives of the Crown; he has such powers and duties as are conferred or imposed on him by or under the Act or such other prerogative as may be assigned to him. The powers and duties may be ample and adequate, but nevertheless "definite, enumerated and defined." In the matter of appointment the Dominion practice is partly accepted, but the transformation of the Governor-General into a purely titular dignity which is in consonance with Dominion autonomy has yet to take place in India. The Governor-General of India can be and is appointed as "His Majesty's Representative" for the exercise of the functions of the Crown in its relations with the Indian States. His Majesty's Representative will have such powers and functions as His

Majesty may be pleased to assign to him. "Viceroy" is a term of courtesy and not of law, and it is not applicable to any one who is not a personal representative and a general agent of the Crown. Section 3 of the Government of India Act 1935 recognises this, although the Governor-General of India and the Crown's representative are allowed to use the title and style of Viceroy.

The resumption of the government of India by the Crown may lead unwary critics to believe that the control of the Imperial Parliament is definitely curtailed, if not eliminated, pursuant to Dominion precedents, and that India may progress along the lines of responsible government by waiving the influence of British Ministers. Section 14 read together with Section 54 of the Constitution Act of 1935 provides for the arrangement that the Governor-General or a Governor is under the general control of the Secretary of State; in other words, the responsibility is to His Majesty's Government in Great Britain and to Parliament. In the case of a Governor, the chain of responsibility includes the Governor-General. Section 13 together with Section 53 provides that the Instruments of Instructions to the Governor-General and the Governor are to be clothed with Parliamentary sanction. The issue of the Instrument of Instructions by way of royal prerogative is taken away, and the authority of the Imperial Parliament is asserted to the prejudice of the inherent rights of the Crown and of the flexibility of the Indian Constitution. Section 308 indicates the procedure for amendment of certain provisions of the Act, and it invokes the authority of Parliament in all matters; the Secretary of State acts as the channel. Section 309 points out that any power conferred by the Act on His Majesty in Council shall be exercisable by Order-in-Council which is to be issued with the sanction of Parliament and not in virtue of the royal prerogative. Section 110 keeps the power of the Imperial Parliament to legislate for British India or any part thereof unaffected; the legislatures of India are forbidden to make

any law affecting the Sovereign or the Royal Family or the succession to the Crown, or the sovereignty, or dominion or suzerainty of the Crown in any part of India, or the law of British nationality or the Army Act, the Air Force Act or the Naval Discipline Act or the law of Prize or Prize Courts; the legislatures cannot abolish the prerogative right of His Majesty to grant special leave to appeal from any court, subject to Section 206 (2). It is only Section 108 which broadens the competency of the legislatures to legislate with the previous sanction of the Governor-General or the Governor in his discretion. The said section provides that the Governor-General can give sanction to any Bill which is repugnant to any provisions of any Act of Parliament extending to British India, but the Instrument of Instructions asks him to reserve such Bill for "the signification of our pleasure." Here "our pleasure" is the pleasure not of His Majesty alone but of His Majesty in Council.

The supremacy of the Imperial Parliament in respect of India is so pronounced that the growth of Dominion conventions in the matter of assertion of the autonomy of the Dominion Parliament is extremely narrow, and accordingly the scheme of making the Government of India responsible to the Crown, as enunciated in the Non-Party Leaders' Appeal to the British Prime Minister, Mr. Churchill, in January 1942, gathers force for accelerating the evolution of responsible government in the Dominion of India. Dominion Constitutions have evolved on the lines of responsible government not by virtue of Imperial Statutes or Orders-in-Council but by the force of conventions and political wisdom of the people, and also by the use of the common law and especially that part of it which deals with the King's prerogative. The kingship is the basis of our constitution and is really part of our constitutional life, because the government of India is vested in the Crown. If the Government of India be really responsible to the Crown without the overriding control

and directions of the Secretary of State; if there is exaltation of the office of India's High Commissioner in London on the lines of the Dominion High Commissioners, if His Majesty follows the constitutional practice of making the Government of India responsible for their acts without the intervention of the British Cabinet, thereby making the responsibility to the Crown real and effective, the evolution of Dominion autonomy in India becomes possible which may be sanctioned by an Imperial Statute after the War in the same way as the Statute of Westminster 1931 gave legal effect to the constitutional usages of the Dominions and some of the decisions of the Imperial Conferences of 1926 and 1930. The present Governor-General's Executive Council has this statutory advantage that its majority decisions will be binding except in the case of matters threatening the security of the country. The Governor-General may help the evolution of responsible government if he behaves as a Dominion Governor-General, and makes the Executive Council responsible for their actions and if he does not exercise his powers of disallowance, certification and reservation without the advice of his Council unless he feels that public opinion swings in a different direction. That was how Dominion autonomy was developed, and this should be the way for India.

The British Commonwealth is a non-national designation. To put it in the language of Prof. Zimmern, the adjective British is a purely political adjective; it is not an adjective of race; it is not an adjective of nationality; it is not an adjective of territory. A Dominion is not the same thing as a nation; it negates the theory of the nation-state. It is a political entity which brings together different kinds of people, different nations, different religions and different cultures. The concept of Dominion Status for India takes its stand on the basis that the State by virtue of its fertilising and regenerating process will produce a nationality to which we owe political duties. It denies

the postulate that a nationality should constitute a State. India needs this political theory of nationality. It is in the cauldron of the State that the fusion should take place. The evolution of Dominion autonomy in India will contribute to the cohesion of the different elements of the Indian nation. Lord Acton rightly observed that the theory of nationality with emphasis on diversities is a retrograde step in history, and hence the concept of Dominion nationhood which labours for common political action is a crying need.

The relations between the Dominions and India are, however, not happy. The principle of inter-Imperial equality can hardly work with satisfactory results if the colour bar is maintained on racial grounds. The Imperial Conference of 1917 induced the Dominions to recognise that "they may be subjected at pleasure by the Indian Government to similar conditions of exclusion to those which they impose". The Imperial Conference of 1918 recognised that "Indians lawfully domiciled in the Dominions should be permitted to bring into them their wives and minor children assuming that such marriages were *de facto* monogamous." The Conference of 1921 further accepted the principle that Indians lawfully resident should not be denied the ordinary right of citizenship. South Africa under the leadership of General Smuts has opposed the extension of political rights to Indians and pursued a policy of colour exclusion to safeguard the Union against the competition of Indians in the economic field. After the Imperial Conference of 1923, a Class Areas Bill was passed to segregate Indians in urban areas. Under the agreement of 1927 the Governments of South Africa and of India recognised that the Union had the right to use all just and legitimate means for the maintenance of Western standards of life. The Government of India maintain an agent in the Union. Prof Keith points out that "Canada unquestionably affords better treatment under treaty and informal agreement to Japanese than is

granted to Indians. Japanese up to 150 a year newcomers are permitted entry, while Indians are entirely refused entry save for mere visits." In British Columbia Indians are excluded from the federal franchise. In the Commonwealth of Australia, the position of Indians is better; the franchise is accorded to them. New Zealand excludes Indians from the franchise; the Irish Free State maintains "the British doctrine of freedom of entry, and no discrimination save that the franchise is restricted to Irish citizens." The problem is made difficult for the League of Nations as immigration is considered essentially a matter of domestic jurisdiction.

In the Union of South Africa Indians are treated as outcastes, and they are considered unfit to mingle their blood with that of Europeans, "many of whom have some strain of negro blood." It is accepted that peoples between whom marriage is forbidden on the score of racial inferiority cannot remain members of the same Commonwealth. "The Union law refuses to treat as a wife, according to law, a woman merely married in India by Hindu rites which admit polygamy".

The Trading and Occupation of Land (Natal and Transval) Bill 1943, approvingly considered by the South African Parliament, worsens the position. The Bill takes away the existing rights of Indians who own and occupy property. The Bill originated in an intensive agitation fanned by the city council of Durban in league with the White Rate-Payers' Association. The intention of the Bill is to peg down the acquisition of properties by Indians from Europeans in Durban, confining them to water-tight compartments. It imposes segregation and casts a slur on the honour of India. The Bill violates the Cape Town Agreement between India and the Union. The Durban City Council has consistently refused to provide housing needs for middle class Indians in the past 25 years. Since 1922 the Durban Council has not sold a single residential

site to Indians, while hundreds of acres have been sold to Europeans from its own unalienated lands.

The Government of India through their High Commissioner made urgent representations to the Union Government. They suggested that without restrictive legislation the situation could be met by bringing the pressure of public opinion to bear upon seller and purchaser alike. In a press statement it was revealed that while fully appreciating the Union Government's declared intention to undertake immediately an enquiry into housing sites and civic amenities for Indians in Durban, the Government of India could not ignore the apprehensions aroused in Indian minds by the extension of statutory restrictions upon the Indian community. Opinion in India unanimously protested that the legislation was repugnant, unnecessary and inopportune. With that opinion the Government of India are in full accord. There is thus a demand in India for the application of the Reciprocity Act to South Africa. The Act authorises the Government of India to subject foreigners to the same disabilities as Indians suffer in those foreigners' countries. Restrictions on Indians in South Africa are imposed by law, by local regulations and social custom. General Smuts describes his Government as His Majesty's Government in the Union of South Africa, and as such Indians born in South Africa should not, in his opinion, look to India for help. But until Indians get full rights as citizens, the moral obligation for their welfare with rest with the Indian Government.

All these controversies are not helpful for the strengthening of the British Commonwealth with India as one of its constituent units. Prof. Keith urges with emphasis that "differentiation against British Indians in such territories is clearly a national wrong which must render loyalty to the Crown ultimately impossible, and the redress of these grievances is an essential work of statesmanship."

The Interim Arrangement

The War broke out in September 1939, and declarations from the British authorities poured in that no statutory changes in the Constitution were possible, whereas the need for Indian co-operation was great for the interim arrangement during the war. The Governor-General made a declaration on the 18th of October 1939 that His Majesty's Government was ready to establish "a Consultative group", representative of all major political parties in British India and of the Indian provinces, over which the Governor-General would preside, which would be summoned at his invitation, and which would have as its object the association of public opinion in India with the conduct of the war and with questions relating to war activities.

The Indian National Congress rejected the plan; the Muslim League asked for complete clarification of the plan and authorised its President to give assurance of co-operation, if he was fully satisfied. The British Government were only eager to explore every possibility "within the ambit of the Government of India Act". On the 2nd of November 1939 Lord Linlithgow issued invitations to Mahatma Gandhi and the Presidents of the Congress and the Muslim League "with a view to putting forward, in agreement, proposals which could be considered for some expansion of the Governor-General's Council at the centre." The basic principles of the proposals were the following: (a) the expansion of the Governor-General's Executive Council by the inclusion of representatives of important groups would be quite distinct from the much wider question of constitutional reform at the end of the war; (b) the arrangement would be within the general scheme of the existing law; (c) the position of the new Councillors appointed from political parties would be identical, in privileges and obligations, with that of the existing members; (d) it would be an *ad hoc* arrangement for the period of the war.

The Congress refused the offer as it was "unfortunate and wholly unsatisfactory." They complained of India being declared a belligerent country without the consent of the Indian people; they asked for clarification of war aims and the method of their application to India, without which it was impossible for them to consider any subsidiary proposal; they propounded that the Indian people must have the right of self-determination in framing their own constitution through a constituent assembly without external interference. The Congress position was put forward in a statement issued by the Working Committee on the 14th September 1939, and such a stand was endorsed by the All-India Congress Committee on the 10th of January 1940. The Governor-General tried to soften public criticisms by stating that the objective of His Majesty's Government for India is full Dominion Status—Dominion Status, too, of the Statute of Westminster variety, that they were ready to expand the Executive Council of the Governor-General by the inclusion of a small number of political leaders, and that they would spare no effort to reduce to the minimum the interval between the existing state of things and the achievement of Dominion Status. The old contention that full responsibility at the centre must be postponed because of inherent divisions and difficulties was not harped upon; there was an invitation to face those difficulties and to find out a solution of them.

On the 7th of August 1940, the Governor-General made a statement indicative of sympathy with the national aspirations of the Indian people. The statement related to the expansion of the Governor-General's Council, the establishment of a War Advisory Council with the representatives of Indian States and different interests in British India, the setting up, after the conclusion of the war, with the least possible delay, of a body representative of the principal elements in India's national life in order to devise the framework of the new constitution which should originate from

Indian conceptions of the social, economic and political structure of Indian life, and the attainment by India of free and equal partnership in the British Commonwealth.

The Governor-General on the 20th November 1940, in his address to the central legislature, said that "the major political parties concerned are not in present circumstances prepared to take advantage of the opportunity offered to them." The British Government move very slowly, and although there are noble declarations that the British mission in the world is not to govern but to help other people to govern themselves, it often becomes difficult to find their liberalism flowering at the right moment. Before the War broke out, they refused to listen to any demand for changes of the Government of India Act in the matter of federation; when the War was declared, they showed extreme short-sightedness in refusing to transfer power to Indian hands; when the War was on the point of enveloping India, they showed some anxiety to placate Indian opinion without parting with real and effective power. The policy of distrust provokes discontent which widens with the process of time. It is unfortunate that the British Government passed through various stages of negotiation and bargaining without visible effects.

The Governor-General's August offer in the matter of expansion of the Executive Council at the centre had no constitutional significance; it was more or less an administrative arrangement to pursue war efforts more effectively. Mr. Amery gave us definitely to understand that "the new members of the Viceroy's Executive Council will be heads of great departments of the State." There was no question of collective responsibility, but it was expected that "their individual responsibility and collective influence will be something very real and far-reaching." Lord Linlithgow, however, trusted that "in this process new bonds of union and understanding will emerge and thus pave the way towards the attainment by India of that free, equal partnership in the British Commonwealth which remains the

proclaimed and accepted goal of the Imperial Crown and British Parliament," but it was authoritatively pointed out that the August offer "prejudiced no constitutional issue" and it "committed no one who co-operated in it to anything beyond his individual co-operation in the war effort."

The Governor-General's offer which conceded only one principle, that the Executive Council would consist of a majority of Indian members, was rejected by the Congress which asked for a provisional National Government immediately at the centre commanding the confidence of the elected elements in the central legislature and working in the closest co-operation with the responsible Ministry in the provinces. This was expressed in a resolution by the Congress Working Committee at its Delhi session on the 7th of July 1940. The Muslim League asked for more places than the Governor-General was prepared to concede, and it also demanded guarantees against the Congress changing its mind and joining the Council later without an agreement with the League. The Hindu Mahasabha put its claims high as a rejoinder to the Muslim demand.

In view of the Congress objection and the hesitant attitude of other parties, the Governor-General suspended his plan of expansion of the Executive Council and the formation of a War Advisory Council. But in July 1941 the August offer of the Governor-General was given effect to as in view of the increasing pressure of war, the Governor-General could not, in justice to India herself, postpone any longer, because of the absence of support from the great political parties, the creation of additional departments in the Executive Council. The basic principle of the August offer was "the desire to associate political leaders of India more directly with the Government of India during the war", but it was changed, or rather frustrated, as the expansion of the Executive Council was in effect "administrative convenience through the appointment of individuals of real standing and importance in the country." The Governor-General got no help from political parties.

A National Defence Council was also established in July 1941 to bring about a liaison amongst the Central Government, the Indian States and the Provincial Governments to pursue war efforts more effectively. The expansion of the Executive Council and the establishment of the Defence Council were no constitutional experiments; they were steps in the direction of accelerating war efforts, and in the absence of co-operation from political parties they could not yield the desired results.

The Non-Party Conference, consisting of representatives from all political parties except the Congress and the Moslem League, held three sessions in Bombay, Poona and Delhi in 1941-42, under the chairmanship of Sir Tej Bahadur Sapru. In the Delhi session on the 21st and 22nd of February 1942, the Conference urged the immediate adoption of the following measures by His Majesty's Government: (1) A declaration that India shall no longer be treated as a Dependency to be ruled from Whitehall and that henceforth her constitutional position and powers will be identical with those of the other self-governing units of the British Commonwealth. (2) During the period of the war the Governor-General's Executive Council shall be reconstructed as a truly National Government functioning on the basis of joint and collective responsibility and consisting entirely of non-officials enjoying public confidence and in charge of all portfolios subject to responsibility to the Crown, and in regard to Defence without prejudice to the position of the Commander-in-Chief as the executive head of the Defence forces. (3) The British Government should recognise the right of India to direct representation through persons chosen by the National Government in all Allied War Councils wherever established and at the Peace Conference. (4) The National Government should be consulted in all matters precisely on the same footing and to the same extent as His Majesty's Government consult the Dominions.

The National Liberal Federation of India in its Madras session held in December, 1941, also adopted a similar resolution urging Indianisation of the Governor-General's Executive Council which should function as a Cabinet with joint responsibility and suggested that the Indianised Government of India should be treated as a Dominion Government by convention as far as possible within the framework of the Government of India Act of 1935.

Before formulating the above proposals, Sir Tej Bahadur Sapru and his associates sent a cable in 1941 to Mr. Churchill, Prime Minister of Great Britain, urging the non-officialisation of the Governor-General's Executive Council and restoration of Ministerial rule in those provinces which are being administered under Section 93 of the Act of 1935. Should the majority party in those provincial legislatures refuse to accept Ministerial responsibilities, non-official advisers, responsible to the Crown, should be appointed. These demands inspired the formation of the Non-Party Conference.

The Non-Party Conference and the National Liberal Federation met the allegation that political India had not formulated its demands in a practical shape to the British Government. The scheme is valuable as it provides a basis for the march of India towards Dominion autonomy within the existing framework of the Constitution which is reactionary on many fronts and in many ways. It seeks to concentrate creative forces on the political plane without violent disturbance of the constitutional machinery. It is a process, not an end. But the scheme throws responsibilities both on the British Government and on Indian leaders. It is to be noted that the constitutional form of government can only work well with mutual goodwill and trust and that parliamentary government is largely the product of history and conventions. If there is genuine desire to part with power on behalf of the British Government and political wisdom of the national leaders of India to direct the chariot of the State along the lines

of responsible government, the theoretical imperfections of the scheme can be got over. It has been done in other parts of the Commonwealth. The genuine desire must be conveyed in an unequivocal, solemn declaration by the British Premier, coupled with a change of heart to implement it.

Mr. Jinnah challenged the fairness of the Sapru plan and criticised it in a statement dated 5th of May, 1941 that the Non-Party Conference was "engineered by the agents of the Congress and the Hindu Mahasabha leaders, although well-known and prominent Congress leaders remained in the background, and that Sir Tej Bahadur Sapru consciously or unconsciously has allowed his name to be associated with this move." The Standing Committee of the Non-Party Conference refuted the charge in a statement.

To students of constitutional history it will be highly interesting that the Sapru plan of reform assumed the character of a national demand before Sir Stafford Cripps was sent out by the British Cabinet to negotiate on certain draft proposals with the different political parties. Except the Muslim League, all political parties veered round the Sapru scheme, and the Congress in course of its negotiations with Sir Stafford Cripps practically insisted on the cardinal features of the Sapru plan, in so far as the Congress was agreeable to constitutional understandings without involving legal changes in the constitutional structure of India. The vindication of the Sapru plan at such a critical period of India's history is a tribute to the Liberal school of politics in India, but the refusal of the British Government to accept the scheme bears testimony to the ascendancy of reactionaries in British politics.

The failure of the Cripps mission in India was foreshadowed in the events connected with the Atlantic Charter which was a joint declaration by President Roosevelt and Mr. Churchill from somewhere in the Atlantic. The terms of the Charter were disclosed by

Mr. Attlee, Lord Privy Seal, in his broadcast on the 14th August, 1941. The Charter, it was stated, contained principles to be adopted for a better future of the world. It declared, amongst many other things, the determination of the United States and the United Kingdom to "respect the right of all peoples to choose the form of government under which they will live." Mr. Churchill made a statement in the House of Commons on the 9th of September 1941 to the effect that the Charter did not modify in any way the various statements of policy which had been made from time to time about development of constitutional government in India. This qualification by Mr. Churchill engendered discontent and distrust amongst politically minded Indians, especially when it was found that Mr. Cordell Hull, the United States Secretary of State, described the Atlantic declaration as being universal in its practical application and that Mr. Attlee, Deputy Prime Minister, declared the principles to be applicable to all countries including Asiatic. Sir Tej Bahadur Sapru in pursuance of a resolution of the Standing Committee of the Non-Party Leaders' Conference of India which met in Allahabad on November 1 and 2, 1941, issued a statement severely criticising the nullifying interpretation of the Atlantic Charter by Mr. Churchill. The Hon'ble Mr. M. S. Aney, Overseas Member, made a statement in the Central Legislative Assembly in October 1941, accepting the interpretation of Mr. Churchill and significantly remarked that "constituted as they were in this House, it was not for them to comment upon these pronouncements or criticise them."

The Pledge of Dominion Status

The Constitution Act of 1935 accepted the pledge contained in the preamble to the Act of 1919 of the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in British India as an integral part of the Empire, but there

was a deliberate omission of reference to Dominion Status. It is also to be noted that no pledge given by any Secretary of State or any Governor-General has any legal bearing on the matter; the only thing by which Parliament is really bound on the question of the political objective is the Act of 1919. The omission of "Dominion Status" from the Act of 1935 caused "a painful feeling in India".

The working of the Reforms of 1935 in respect of provincial autonomy without any element of responsibility in the centre spread suspicion about the intentions of the British Government. Doubts entered Indian minds whether the enlarged conception of Dominion Status, as sanctioned by the Statute of Westminster 1931, was meant to be applied to India. This doubt was clarified by the memorable pronouncement of Lord Linlithgow on the 10th of January 1940, which stated that "their objective for India is full Dominion Status—Dominion Status too of the Westminster variety." These repeated declarations fixed the ultimate political objective for India, but they did not bring about actual transference of power, nor did they release India from the control of Whitehall.

It is interesting to observe that the Morley-Minto reforms tried to "blend the principle of autocracy derived from Mogul Emperors with the principles of constitutionalism derived from the British Crown and Parliament." Lord Morley, however, gave a disclaimer that "if this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I for one would have nothing at all to do with it." But through the labours of Mr. Montagu, Secretary of State for India, a new policy was initiated. Mr. Montagu announced on the 20th of August 1917 the policy of "the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government as an integral part of the British Empire." This declaration was incorporated in the preamble to the

Government of India Act 1919. On the occasion of the inauguration of the Indian legislature at Delhi in February 1921 His Majesty the King Emperor gave the following message through the Duke of Connaught: "For years, it may be for generations, patriotic and loyal Indians have dreamed of Swaraj for their Motherland. To-day you have the beginnings of Swaraj within my Empire, and widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy." The Instrument of Instructions to the Governor-General of India, dated the 15th March 1921, contained: "For above all things it is our will and pleasure that the plans laid by our Parliament . . . may come to fruition to the end that British India may attain its true place among our Dominions." In 1924, the observations of Sir Malcolm Hailey, Home Member of the Government of India, that there was difference of substance between responsible government as promised to India by the pronouncement on the 20th of August 1917 and Dominion Status as enjoyed by the British Dominions, showed "a new current of thought in official circles in India." In 1929, Lord Irwin, Governor-General of India, with the permission of the British Government, stated that "it was implicit in the declaration of 1917 that the natural issue of India's constitutional progress, as then contemplated, was the attainment of Dominion Status." This appeased political India to a certain extent.

The Indian National Congress had abundant faith in Dominion Status. The Nehru Committee's plan of constitutional reform, which was ratified by the all-Parties Convention in Calcutta in 1928, accepted the partnership of the British Commonwealth of Nations. The Gandhi-Irwin Agreement of 1931 was geared to the principle of Dominion Status. In the Round Table Conference in London in 1931, Mahatma Gandhi as the sole representative of the Congress was willing to accept Dominion Status.

It is to be noted that the Round Table Conference was called on the basis of the announcement made by His Majesty's Government on the 31st of October 1929 which accepted Dominion Status as the political objective for India. The participation of the Congress in the second session of the Round Table Conference is, therefore, significant. Even in 1937, Mahatma Gandhi proclaimed that "so far as I am concerned if Dominion Status were offered in the terms of the Statute of Westminster, that is the right to secede at will, I would unhesitatingly accept it."¹ The Congress, however, later declared its faith in complete independence. In the pledge of Independence Day, the 26th January, Congress people take the vow that it is the inalienable right of the Indian people to claim independence and that India must sever the British connection because the British Government has ruined India economically, politically, culturally and spiritually. Mahatma Gandhi has always stated that an agreement with Britain is possible if the substance of independence is conceded. But subsequent events have made him an ardent critic of the British connection, and he has not even hesitated to declare that there can be no solution of the Indian problem unless the British withdraw. The Congress stands committed to the goal of independence, and it is definitely stated on behalf of the Congress that Indian freedom cannot exist within the orbit of Imperialism and Dominion Status or any other status within the Imperial structure and that Dominion Status is not in keeping with the dignity of a great nation.² Congress demands are that India's constitution must be based on independence, democracy and national unity and that sovereignty in India must rest with the people. Pt. Jawharlal Nehru as President of the Congress said: "I cannot conceive of a genuine independence within the Empire for India. I conceive of a free India coming to a friendly agreement with Britain."

¹ Mr. Gandhi's letter to Mr. Henry S. L. Polak, January, 1937.

² Congress Working Committee's Resolution, March 1, 1940.

The Cripps Mission

On March 11, 1942, the British Prime Minister made an important statement on India in the House of Commons and revealed that Sir Stafford Cripps, the Lord Privy Seal, would visit India on behalf of the British Government in order to secure the necessary measure of assent to proposals which the Cabinet had evolved to meet the political situation in India with the object of securing her full participation in the Allied war efforts. The basic features of the draft proposals are as follows:

(1) The creation of a new Indian Union which shall constitute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown, but equal to them in every respect in no way subordinate in any aspect of its domestic and external affairs. There will be no restriction on the power of the Indian Union to decide in future its relationship to the other member-States of the British Commonwealth.

(2) Upon the cessation of hostilities, the constitution-making body shall be elected by the entire members of the lower Houses of the provincial legislatures, as a single electoral college, by the system of proportional representation—the number thereof being one-tenth of the number of the electoral college. Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole and with the same powers as British Indian members.

(3) Any province of British India that is not prepared to accept the new constitution will have the right to secede from the Indian Union, and should the non-acceding provinces desire, the British Government will be prepared to agree upon a new Constitution giving them the same full status as the Indian Union.

(4) A treaty will be signed between His Majesty's Government and the constitution-making body to cover

all necessary matters arising out of the complete transfer of responsibility from British to Indian hands.

(5) Until the new Constitution is framed and during the emergency of the War, His Majesty's Government must inevitably bear the responsibility for, and retain the control and direction of, the defence of India as part of their world war effort, but the task of organising to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the peoples of India.

The draft proposals of the British War Cabinet are open to the following criticisms:

(1) The treaty between the British Government and the constitution-making body in India will make provision, in accordance with the undertakings given by His Majesty's Government, for the protection of racial and religious minorities. The said undertakings, unless defined precisely, may sterilise the flow of self-government.

(2) A province of British India can, on its own action and without reference to the desire of the Union, secede from the proposed Indian Union. The constituent assembly becomes meaningless if its constitution is not binding on all the units taking part therein. The very presence of a unit in the constitution-making body should bind the unit to the decision of the constituent assembly if such an assembly is to function as a plenary body.

(3) The proposed constitution-making body will be determined by the legislatures, elected through separate electorates, communal reservations and unsatisfactory franchise. Such handicaps reduce the importance and sanctity of the constituent assembly.

(4) The entry of an Indian State into the proposed Indian Union is problematical, if the Indian Union is to have real self-government. The Governor-General of India can hardly function as the Crown Representative in respect of Indian States in the event of the establishment of the proposed Indian Union, for (1) the Governor-General

will be under the influence of the Indian Government; (2) the Governor-General of a Dominion is the nominee of the Dominion concerned, not of the British Government. The native territories in South Africa and the native States in India can hardly be transferred to a completely independent Government, which claims the right of secession, without their consent. It is to be noted that the duties of the British Crown with regard to Indian States cannot be varied by an independent Indian Union, even if the Indian States become its component parts.

(5) The draft proposals seek to lay down the steps to be taken for the fulfilment of promises in regard to the future of India. The scheme of reform embodied in it is to take effect on the cessation of hostilities. On a most favourable interpretation the draft proposals envisage, in respect of immediate arrangement, the non-officialisation of the Governor-General's Executive Council, except the Defence portfolio (so far as it relates to the control and direction of the defence of India as part of their world war effort). It comes to this, that before the cessation of hostilities the co-operation of the peoples of India will be sought within the ambit of the existing Constitution Act, and towards that end the Governor-General will decide the method and manner of expanding the Executive Council. There was no assurance that the Governor-General's Executive Council would be permitted to function as a national Cabinet through constitutional understandings. There was evident hesitancy on the part of the British Government to part with power before the cessation of hostilities through conventions on the analogy of the Dominion practice.

(6) If the Indian Union be merely recognised as a Dominion under the Statute of Westminster 1931 without safeguarding the treaty referred to, the sovereignty of the Parliament of the Dominion of India will remain supreme. Except for the right of establishing a formal republic independent of the British Crown, a Dominion Parliament,

unless fettered by its own decisions or any restraining provision incorporated in the Statute of Westminster, is sovereign.¹

It will be instructive to remember that the Anglo-Irish Treaty of 1921, which formed the basis of the Irish Free State Act 1922, was not safeguarded in the Statute of Westminster. In the absence of such a safeguarding clause, the Irish Parliament became free to legislate without regard to the Treaty or to the Constituent Act. It has been established by the Privy Council decision (in *Moore vs. Attorney General for Irish Free State*, 1935) in disregard of the Irish Supreme Court. Lord Sankey in delivering judgment in the above case laid down: (a) the Treaty and the Constituent Act respectively form parts of the Statute law of the United Kingdom, each of them being parts of an Imperial Act; (b) before the passing of the Statute of Westminster, it was not competent for the Irish Free State Parliament to pass an Act abrogating the Treaty because the Colonial Laws Validity Act forbade a Dominion legislature to pass a law repugnant to an Imperial Act; (c) the effect of the Statute of Westminster was to remove the fetter which lay upon the Irish Free State legislature by reason of the Colonial Laws Validity Act. Before 1931, there was the supremacy of the Imperial Parliament, the supremacy of the Privy Council and the supremacy of the British Crown even in respect of the Dominions. The Statute of Westminster 1931 abolishes all kinds of supremacy in a substantial manner. Similarly, the legislative power of the Indian Parliament can only be supreme if the Treaty proposed to be negotiated is ratified by the Imperial Parliament without any safeguarding clause in the Statute of Westminster. But if such a treaty is safeguarded, which

¹ The Union of South Africa and the Irish Free State utilised the sovereignty of the Dominion Parliaments to the maximum length. The Union of South Africa passed the Status of the Union and the Royal Executive Functions and Seals Acts 1934, authorising the Governor-General in Council to exercise the powers of the King in Council, and the Irish Free State severed all connection between the Civil Service, the Army and the Judiciary and the Crown.

is a likely eventuality, in terms of the draft proposals of the British War Cabinet, the sovereignty of the Indian Parliament will be *pro tanto* diminished.

The draft proposals, especially with regard to the immediate arrangement, did not meet with the approval of the Indian National Congress. In the opinion of the Congress, "it is the present that counts, and even proposals for the future are important in so far as they affect the present." No political parties asked for immediate legal changes in the constitutional structure, but they pleaded for definite assurances and conventions which would indicate that the interim Government would function as a free Government, the members of which would act as the members of a Cabinet in a constitutional Government. The Congress, the Liberal Federation, the Hindu Mahasabha and a host of individual leaders such as Sir Tej Bahadur Sapru and Dr. M. R. Jayakar asked for a National Government within the limitations of the present Act. The required assurance was not given. The Moslem League, however, gave the world to understand that Moslems would never have agreed to a tyrannical rule by the majority. On the failure of negotiations with the Congress, Sir Stafford Cripps announced that the draft proposals stood withdrawn, and as such the British Cabinet was no longer bound by the promise of reforms conveyed therein. India was thrown back to the August offer of 1940.

Prof. R. Coupland (of Oxford University) who was attached to the Cripps mission wrote in his book, *The Cripps Mission*: "The decisive factor was the clash between Congress and British views as to the character of the proposed National Government" Mr. Louis Fisher, the American author and journalist, who was in New Delhi at the time of negotiations with Sir Stafford Cripps in 1942, wrote in the American press: "Azad, Nehru and Rajagopalachari have told me that Cripps offered them a National Government not subject to the Viceroy's veto. They have put that in writing. I do not think they would

lie and attribute to Cripps statements he never made". Mr. Amery, Secretary of State for India, in reply to an American interviewer, stated the following in order to silence public criticism: "I can deny categorically that Cripps was overruled from London. What he did offer for the war period, over and above full freedom after the war, was the fullest possible share in the Central Government of India under the existing Constitution." All this helps the understanding of the failure of the Cripps mission which devastated India's political hopes and aspirations to a great degree.

The Cripps mission has come and gone; the British proposals of constitutional reforms at the end of the war were offered and withdrawn, but the episode left very unfortunate repercussions on Indian politics. The Cripps mission led to (1) the stiffening of the attitude of Mahatma Gandhi and the Congress; (2) the insistence of the demand by Mr. Jinnah and the Moslem League for Pakisthan; (3) the dissociation of Mr. C. Rajagopalachari, a very prominent member of the Congress Working Committee, from the Congress with a number of his disciples in Madras; (4) the growth of a sense of frustration in non-Congress political parties.

(1) The political creed of Mahatma Gandhi[†] favoured the British connection and acknowledged Hindu-Moslem unity as the apex of the citadel of Swaraj. The Cripps mission came as a shock to Mahatmajī; he studied in it a deliberate refusal on the part of the British Government to transfer power to Indian hands. Then he began to advocate that the British should withdraw from India "in an orderly manner" and that there can be no Hindu-Moslem unity so long as India is not freed from the yoke of alien rule. He abandoned his policy of non-embarrassment of the British, born of confidence in the British sense of justice, and urged the immediate withdrawal of British power from Indian soil. This withdrawal of British power is interpreted as the transfer of power from

British to Indian hands. The new creed of Mahatma Gandhi influenced the Congress course of action. The Congress strove hard for the seizure of power through the formation of a national Cabinet in the centre, and the Poona offer in 1941 was made to the British Government in evident disregard of the creed of its leader and mentor, Mahatma Gandhi. In course of negotiations with Sir Stafford Cripps on the draft proposals of the British War Cabinet, the Congress wistfully looked for the formation of a national Cabinet, based on constitutional understandings. But the failure of the Cripps mission drove the Congress again into the net of Gandhi's leadership. The Congress again stuck to Gandhi after a temporary break which was occasioned in quest of power. The Congress Working Committee adopted a fateful resolution on the 14th of July 1942 at its Warda session under the guidance of Mahatma Gandhi. It opened up a new policy for the Congress, fraught with the gravest consequences to the Congress and the country. The Congress argued on the following lines in that resolution:

The Congress believes that the freedom of India is necessary not only in the interests of India but also for the safety of the world. It pursued a policy of non-embarrassment to the British since the outbreak of the present world-war as it believed that (1) real power would be transferred to popular representatives, so as to enable the nation to make its fullest contribution towards the realisation of human freedom throughout the world and (2) negatively nothing would be done which was calculated to tighten Britain's hold on India. These hopes were frustrated by the abortive Cripps proposals. The Congress Working Committee definitely states that a way out of the communal tangle is made impossible by the presence of the foreign power. It pleads for the withdrawal of British rule from India and formation of a representative provisional Government which will later evolve a scheme by which a constituent assembly can be convened in order to prepare

a constitution acceptable to all sections of the people. The proposal of the withdrawal of the British power from India is not intended to mean the physical withdrawal of all Britons from India and certainly not of those who would make India their home and live there as citizens and as equals with the others. The Congress reiterates its pledge to resist aggression effectively with the people's united will and strength behind it and expresses its agreement with the policy of stationing the armed forces of the Allies in India to resist Japanese or other aggression and to protect and help China. Should this appeal fail, the Congress will then be reluctantly compelled to utilise all its non-violent strength for the vindication of political rights and liberty. A similar resolution was adopted in the Bombay session of the All-India Congress Committee on the 8th of August 1942.

(2) The Moslem League's stand is definitely aimed at the disintegration of India and creation of sovereign and autonomous provinces without the cohesive influence of a Central Government. This stand is generally on the basis of the existing territorial boundaries of the provinces formed by the British administration, but it ignores integral unity brought about by the British Government through the establishment of a Central Government. The Muslim League opposed the plan of reform advocated in the Non-Party Leaders' Conference under the guidance of Sir Tej Bahadur Sapru, merely on the ground that the Sapru scheme meant the transfer of all power and authority to the Central Government to be set up on the basis of India being a single national entity and enjoying Dominion Status in action. Any scheme which seeks to torpedo the Pakistan demand of Moslem India will be resisted by the Moslem League, and as such any political party which stands for the establishment of a democratic State in India can have no agreement with the Moslem League. The Cripps mission was found to accelerate the demand for Pakistan. Mr. Jinnah presiding at the annual meeting

of the Moslem League at Allahabad in April 1942 when Sir Stafford Cripps was exploring the avenues of compromise on the draft proposals of the British War Cabinet, announced clearly and forcibly: "Rest assured that our aim is Pakisthan, and whatever the proposals of His Majesty's Government may be, if they are such that we cannot achieve Pakisthan, we will never accept." The Allahabad meeting of the Moslem League made Mr. Jinnah virtually a dictator till the next session of the League.

(3) The failure of the Cripps mission disheartened Mr. C. Rajagopalachari, a prominent member of the Congress Working Committee. It was current in Congress circles that it was through his able persuasion that the Congress made the memorable offer of co-operation couched in the Poona resolution of the Congress Working Committee in 1941, and that it was largely through his insistence that the Congress showed its eagerness to Sir Stafford Cripps to form a national Cabinet in the interest of war efforts on behalf of Great Britain and the Allies. After the failure of the Cripps mission, a resolution recommending the All-India Congress Committee to acknowledge the Moslem League's claim for separation, should the same be persisted in when the time comes for framing the future constitution of India, and to invite the Moslem League to consultation for the purpose of arriving at an agreement and securing the installation of a National Government to meet the present emergency, was passed by the Madras Congress Legislature Party at its meeting on the 23rd of April 1942, Mr. C. Rajagopalachari presiding. The same resolution was moved by Mr. C. Rajagopalachari at the Allahabad session of the All-India Congress Committee on the 2nd of May 1942. It was rejected by 120 votes against 15 votes. Mr. Rajagopalachari resigned first from the Congress Working Committee and later from the Congress organisation, to preach his living message and faith to the people unhampered by the whip of Congress organisational discipline. Mahatma Gandhi criticised the stand of Mr. C.

Rajagopalachari: "He yields the right of secession now to buy unity in the hope of keeping away the Japanese. I consider the vivisection of India to be a sin. I am firmly of opinion that there is no unity whilst the third party is there to prevent it. It creates the artificial division and it keeps it up."

Mr. C. Rajagopalachari asserted the vindication of the right of self-determination for the people of India which is recognised by the Congress, as is evident from the resolution of the Congress Working Committee in New Delhi, April 1942, on the draft proposals of the British War Cabinet. The right of self-determination carries with it the right of a territorial unit to vote itself in or out of a Union. It is no concession to the Pakistan movement inasmuch as the right of self-determination is to be exercised by the declared will of a territorial unit, and not by the declared wishes of the majority of a major community resident therein.¹ In practice, the grant of the right of self-determination is not likely to help the disintegration of India as it will be difficult for any Moslem province to obtain a majority of the people thereof in favour of secession from the Indian Union, when such a secession carried the threat of weakening the political, financial and military position of such province. But the All-India Congress Committee at its Allahabad session in May 1942, in a huff and out of dread of the spectre of Pakistan, adopted a resolution to the effect that any proposal to disintegrate India by giving liberty to any component State or territorial unit to secede from the Indian Union or Federation could not be acceptable to the Congress. The Congress thus placed itself in an embarrassing position, as the right of self-determination was indirectly vetoed out for no practical gain. Congress leaders, however,

¹ The Moslem League under Mr. Jinnah's leadership leaves aside the right of self-determination and recommends national plebiscite of Moslems in Moslem-majority provinces to determine Pakistan. It is only Sir Sikander Hyat Khan, Premier of the Punjab, and a prominent member of the Moslem League, who talked in the language of self-determination in tune with Azad Moslems.

maintain that their stand in favour of self-determination is not affected. The Congress and other bodies are apprehensive that Pakistan is not the final demand of the Muslim League but only the first stage towards affiliation with Pan-Islamism. To quote the language of Mr. K. M. Munshi, "Pakistan begins with a modest search for safeguards against Hindu majority, but it ends by preaching a crusade for the restoration of the Empire of Chengizkhan."

(4) The failure of the Cripps mission radiated a sense of frustration in political India. There was a belief that the British Government would sincerely try to enthuse the Indian nation in favour of war efforts by the transfer of power to Indian hands. The Indianisation of the Governor-General's Executive Council was not the point at issue; the vital demand was for the transfer of power. The failure of the Cripps mission put out the light of faith, and black resentment against the British Government followed. This is fatal for India's constitutional progress and India's war efforts in favour of her allies. The will to resist the enemy suffers in the long run. Such a situation cannot be contemplated with equanimity.

Future historians will, it is hoped, be in a better position to judge the significance of the Congress decision of August 1942 in a more dispassionate manner and to apportion responsibility for the regrettable incidents that followed the arrest of Congress leaders. It must, however, be recognised that the resolution of the All India Congress Committee of the 8th August 1942 and almost simultaneous arrests of its authors by the Government of India were interpreted by the people who took part in the movement of disobedience as a signal for revolt. From non-violence the struggle degenerated into a general rising, attended with all its concomitant evils including loot, arson and murder. The communications of the country were dislocated, though temporarily, at a moment when Japan was knocking at the very gates of Bengal and would have

certainly over-run the country if she could. Thus the outburst was harmful to India's safety, and as such it greatly prejudiced her claims for a National Government and alienated the sympathy and support of many Britons and other people friendly to India's political aspirations.

The expansion of the Governor-General's Executive Council in July 1941, and its further expansion in July 1942, have little constitutional significance. The expansion is effected within the ambit of the existing Constitution Act; the appointments were made not on party affiliation having influence and voice in the country; there was no attempt to assuage political discontent. Some individuals were appointed on arbitrary standards, subject to two limitations, viz., the major provinces and major communities may be represented in the Executive Council. The Congress, the Moslem League, the Liberal Federation, the Hindu Mahasabha, none of these were consulted, nor were their recognised representatives taken in. The expansion does not involve the transfer of power on the part of the British Government; it was more for administrative convenience than for political appeasement. The key portfolios, such as Home and Finance, are still in the hands of Britons, whereas many portfolios have been subdivided and new ones created to increase the number of Councillors. After the two expansions, one in July 1941 and the other in July 1942, the portfolios except War which is left to the Commander-in-Chief, were as follows: Defence, Commerce, Supply, Law, Home, Labour, War transport, Finance, Posts and Air, Indian Overseas, Information and Broadcasting, Civil Defence, and Education, Health and Lands. The new Executive Councillors, the majority of whom are Indians, have not asserted their right to behave as Cabinet Ministers; there is no understanding that they shall function as a policy-formulating and policy-directing body. The spirit of the Constitution Act demands that the Executive Councillors should reflect the opinion of the people in the Council and act accordingly, although

they are not formally responsible to the legislature. Thus the present Governor-General's Executive Council, giving the majority of seats to non-official Indians for the first time, stands irremovable by the legislature, non-responsible to public opinion, unrepresentative of the major political parties and denuded of any effective power except by the good will of the Governor-General. Political India has evidently nothing to gain from such expansions. It is undoubtedly a strange phenomenon that the Governor-General's Executive Council consisting of ardent individuals of mature political experience and wisdom cannot be transformed into a national Cabinet because of the overriding powers of the Governor-General. That is not the lesson of Dominion autonomy and Dominion practice in the British Commonwealth.

The testimony of Mr. M. S. Aney, who was appointed a member of the Governor-General's expanded Executive Council in 1941, is, however, encouraging. After his resignation which took place on the 17th of February 1943 owing to fundamental difference with the Government of India on the issue of Mahatma Gandhi's fast in jail for a period of three weeks (which began on the 10th of February 1943) he made an important statement in course of which he observed: "Indians holding the high office of member of the Viceroy's Executive Council can do much useful and beneficial work. The creating of a distinct and indisputable majority of Indians in the Viceroy's Executive Council is an outstanding reform and improvement, of which progressive elements should have taken further advantage. There is enough scope for solid service to the Indian people by Indian members even under the existing system and still more by conventions which slowly but steadily grow up." The fact that he had to resign along with two other colleagues, Mr. N. R. Sarker and Sir H. P. Mody, was not depressing to him. The full results of this experiment are yet sealed to us in the stress of emergency born of the War.

CHAPTER III

THE FEDERATION OF INDIA

THE BRITISH have established their ascendancy in India through fortuitous circumstances. The political unity of India, the growth of democratic ideas, and the spread of liberal movement on all fronts of life have been the direct blessings of British rule in India. Gladstone laid down that "our title to be in India depends on the first condition that our being there is profitable to the Indian nations, and on the second condition that we can make them see and understand it to be profitable." This liberal policy comes into direct conflict with the conservative creed set out by Sir Samuel Hoare, Secretary of State for India, in piloting the Government of India Bill 1935, that Parliament cannot relinquish its responsibility of fixing a constitution for British India which it considers most suitable. This arrogation of power is hurtful to political reforms designed for the transfer of power to the people.

The series of constitutional reforms culminating in the Morley-Minto Reforms of 1909, aimed at the creation and enlargement of legislative councils and not "at the creation of Parliament", were governed by two policies, first, that representative government in its Western sense is totally inapplicable to the Indian Empire; secondly, that the safety and welfare of India must depend on the supremacy of the British administration.¹ There was a welcome departure in the Reforms Act of 1919 which recognised responsible government as the goal of India. The Government of India Act 1935 is a further instalment in the direction of self-government. The reforms granted were modelled on the British system subject to qualifications

¹ Lord Morley, Secretary of State for India, described the Congress claim to self-government on colonial lines as "a cry for the moon" and said: "The furcoat of Canada would never suit the actual conditions of the historical, cultural, and psychological climate of India."

and modifications devised by Parliament mainly in the interests of Great Britain. The release from British dominance was, however, for the first time contemplated in the pronounced intention of fostering ministerial responsibility in the provinces. To put it in the language of Mr. Amery, Secretary of State for India, "the Act of 1935 was in essentials the work of the British Government and Parliament and was based on the existing structure of Indian Government and inspired by British ideas." The political goal was fixed by the British Parliament, and the reforms were modelled on the British system of parliamentary government for fulfilment of India's political aspirations. The Constitution contains elements of parliamentary government and provisions helpful for creation of healthy conventions, but the Act of 1935 also provides hurdles which have to be overcome before the goal can be reached. It may, therefore, be said that the frame of reforms is good, as it contemplates the all-India Federation, but the picture is bad, as there are many provisions prejudicial to the growth of full responsible government.

Genesis of the Federal Principle

The British Government in India was established on a centralised basis; it sought to give political unity to India through the machinery of a strong central administration. The devolution of powers that followed was not the work of federal sentiments; it was related to administrative conveniences. Indian States which cover an area of 5,98,138 square miles, or nearly two-fifths of the total area of India, do not form a compact piece of territory. There are 562 such units in India, and out of the estimated total revenue of about Rs. 45 crores for all the States, 23 States have between them a revenue of over 35 crores. There are too many small States whose backwardness is inevitable in view of their small revenues. They are historical accidents,

not a matter of deliberate choice. Subjects of common concern to the States and British India, such as defence, tariffs, exchange, opium, salt, railways, and posts and telegraphs, are growing in volume and importance. So long as they remain in the hands of the Governor-General, Princes feel that their point of view will receive adequate consideration. But in a self-governing British India, Princes cannot let things alone, and naturally they would claim a share in the control of common subjects. Moreover, responsible government in British India cannot be a matter of indifference to the Princes as political hopes and aspirations "overleap frontier-lines like sparks across a street". The dawn of self-government in British India is bound to stir Indian Princes into a course of action seeking association with British India in matters of common concern without loss of their individuality. The conception of the future of India as a sisterhood of States, self-governing in all matters of provincial interest, presided over by a Central Government dealing with matters of common interest to the whole of India and acting as arbiter in inter-State relations, was visualised in the Report of Indian Constitutional Reforms 1918, and it was definitely stated that "in this picture there is a place also for the native States". It is true that the Reforms Act of 1919 did not disturb the basic scheme of unitary government as the Governor-General in Council was the cornerstone of the whole constitutional edifice. The Indian Statutory Commission 1929, known in political parlance as the Simon Commission, recommended the creation of an all-India Advisory Council for organised consultation between the States and British India leading to Indian Federation. The Simon Commission reported: "What we are proposing is merely a throwing across the gap of the first strands which may in time make the line of a solid and enduring bridge." The Government of India in their despatch on the Report of the Simon Commission considered the federal union of the provinces of British India

and States as "a distant ideal". It was in the first session of the Round Table Conference in 1930 that the representatives of Princes made their historic declaration that they were prepared to join an all-India Federation and could federate "only with a self-governing British India". The British Indian delegates at the Round Table Conference endorsed the principle of all-India Federation.

Those who are conversant with Indian history know full well that beneath all differences of religion, culture, race and political structure there is an underlying unity, and that India's mission in the march of history has been to accommodate differences and not to accentuate them. There is the fundamental geographical unity "which has walled off India from the outside world", there is the unity of race which "makes Indians a distinctive type among the main races of mankind", there is the political unity which India has enjoyed in a far stronger manner under British rule through unity in the administration of law, economic development and of communications. It is, indeed, a commendable and patriotic sentiment that "if some sort of Indian unity had not existed, it would have to be invented." Accordingly, the ideal of an all-India Federation is considered essential for the full expression of India's political objective and cultural mission. Such a federation on a basis predominantly democratic is necessary for the dignity and greatness of India, for the preservation of her internal peace and unity, and also for enabling India to play her role in helping to mould the affairs of the world.

In the task of framing India's constitution it is to be recognised that India is, "in fact, as well as by legal definition, one geographical whole" and that a sense of inner cohesion runs through the whole fabric of Indian culture. The greatest argument for Federation is the constitutional unity of India as a whole. The federation of British India alone impairs the organic unity of India. An all-India Federation provides scope for political cohesion which the peoples of India in a sense never before possessed in all

their long history. British India, governed on the advice of Ministers responsible to the legislature, is sure to run at a tangent from Indian India under the paramountcy of the Crown. Cultural unity on which emphasis is laid in respect of India is no substitute for constitutional unity. The history of Europe teaches the tragic lesson that cultural unity offers no dependable bond if the creation of separate sovereignties under different constitutional systems is permitted. The separatist tendencies that follow political divisions serve as dynamite for conflagration. It is only by Federation that unity and local diversities may be maintained on the basis of cohesion for which India has striven all these years.

There is no escape from the hard truth that "to wait till the administration of Indian States is brought into line with that of British Indian provinces will mean indefinite waiting for united India". But the advocates of the all-India Federation sincerely believe that the active contact of Indian States with British Indian units in the federal government would accelerate the pace of responsible and representative government in the Indian States. Through the interplay of social forces it is inevitable that in due time the basic civil liberties, *viz.*, the right of habeas corpus, freedom of speech and freedom of association, must be established, and that in the ultimate analysis Princes must more and more assume the role of constitutional rulers. Federation will make this process "more smooth and less violent than it may otherwise become".

The Act of 1935 accepted the constitutional scheme of an all-India Federation.¹ To make any federal scheme a

¹ "In a loose sense the word "federal" may be used to describe any arrangement under which self-contained States agree to delegate their powers to a common Government with a view to an entirely new constitution even of the States themselves. But the natural and literal interpretation of the word confines its application to cases in which these States, while agreeing on a measure of delegation, yet in the main continue to preserve their original constitutions."—Judgment of Viscount Haldane in *Attorney General for the Commonwealth of Australia and others v. the Colonial Sugar Refining Co., Ltd. and others* (1914), A.C. 237.

success, the units and the federal centre must crystallise the principles of self-government in the allotted sphere of jurisdiction, and there should be healthy co-operation between the Federation and its parts. On the first reading of the Indian Constitution Bill, the Marquess of Linlithgow rhetorically put it in the House of Lords: "I can conceive of no greater folly than that of those who would write liberty across the face of every provincial constitution and at the centre perpetuate a form of constitution which withholds the principle of self-government. To do that would be to secure for the Central Government the mistrust and hostility of politically minded Indians throughout the country, and to invite Governments and legislatures in every province to dedicate themselves to the task of rendering unworkable the system of Central Government." But the introduction of Federation at the centre was deferred indefinitely, and gradually the idea of its introduction under the present Constitution was finally abandoned. This was indeed a tragedy, especially when Sir Samuel Hoare emphatically declared that he regarded the scheme "as a single, comprehensive scheme" and that he was not prepared to countenance any proposal that should divide the scheme into two parts and that would make it possible for one part to come into operation without the other.¹ To quote the language of Mr. Amery, "the worst form of dyarchy is when you have a dyarchy between an irremovable executive on the one side and an irresponsible, vociferous majority in the legislature on the other; there you have the kind of Government that creates the maximum of friction and produces irresponsibility on the one side and violence and timidity on the other. It is a system that has never worked in this country or anywhere in the British Empire."² But the irremovable Executive and irresponsible Opposition in the legislature are being

¹ Parliamentary Debates, Indian Affairs, House of Commons, Vol. 1 (1934-35).

² Ibid.

continued in the Central Government of India with the Government of India Act 1935 in its federal part held up for reasons which have not been satisfactorily explained to political India.

Provincial autonomy under the Act of 1935 came into effect in April 1937. India was assured from responsible quarters that every effort would be made to inaugurate Federation within a reasonable time after the introduction of provincial autonomy. When Lord Linlithgow came out as the Governor-General of India, he expressed himself in that strain. On the 1st of October 1937, after the experience of eighteen months in India, he held out the same hope and urged the importance of Federation as the needed move to secure unity in the political sphere, although there were many sincere doubts and hesitations from the major political parties. Lord Stanley made a statement in the House of Commons that the aim of the Imperial Government was to carry into effect Parliament's intention of introducing provincial autonomy as an integral part of a single constitutional scheme with the least possible delay and that steps towards that end were being taken by the Governor-General.

Lord Linlithgow announced towards the end of 1937 that to hasten the introduction of Federation which involved the harmonization of Indian provinces with their widely varying conditions and problems and the Indian States with their long individual traditions into a common scheme of British Indian and Indian State interests and concerns, emissaries had been despatched to the Rulers of the States to obtain the fullest information regarding the attitude of the Indian States, and there was a direct reference to the difficult nature of the problems inherent in the establishment of Federation. An authoritative statement was made in the Central Assembly in 1938 on behalf of the Government of India that representatives of the Viceroy had had discussions with the Rulers and their Ministers "on many points of difficulty or uncertainty" and

that the replies received from the States were under the consideration of Government. There was the usual assurance that the early achievement of Federation "represents the considered policy of both His Majesty's Government and the Government of India". On all conceivable occasions it was pointed out that "provincial autonomy and federation, essentially and intrinsically parts one of the other, represent a great decision."

Lord Zetland, Secretary of State for India, in a speech at the Bombay Dinner in London, 1938, clearly indicated that the federal structure in the Constitution could not be amended before Federation had come into being. He suggested that room might be found within the framework of the Act to accommodate the reasonable requirements of the provinces and the States. In fact, however, Government did nothing in a constructive manner; they did not bring Federation into being, nor did they seek to meet the criticisms by making necessary amendments. Time rolled on; the Central Government remained unreformed; the old central legislature was extended year after year resulting in stagnation.

Political India is opposed not to federation in principle but to the particular scheme embodied in the Government of India Act. The vital defects of the federal scheme may be enumerated as follows:—(1) Representation of Indian States through nomination by the Princes¹ and undue weightage given to them, especially in the Council of State. The weightage in the Council of State is significant as the Upper House has co-ordinate powers with the Lower House.²

¹ There is nothing in the Act to prevent the Princes from introducing some element of popular choice in the matter of representation of States in the federal legislature, and Lord Zetland as Secretary of State gave assurance that the Paramount Power would not stand in the way of any Prince seeking to temper the rigid autocracy of bygone days with a more liberal system (Bombay Dinner Speech in London, 1938).

² The Parliament Act of 1911 in Great Britain limits the powers of the House of Lords which forms the Upper House of the British Parliament.

(2) The system of indirect election and separate electorates for the federal legislature in the British Indian Provinces.

(3) Reserve powers and special responsibilities in the hands of the Viceroy are overpowering.

(4) The rigidity of the Constitution, even parliamentary authority in the matter of alteration of the constitution is dependent on the sanction of the Princes.

British Indian critics suspect in the scheme of federation a deliberate design to stifle responsible government at the centre through the play of reactionary forces represented by the Indian Princes. But British critics explain away the defects by stating that the Act was the outcome of a compromise between many conflicting elements, that it was passed through a predominantly Conservative Parliament and that alterations in the constitution, recommended by the responsible Ministry and legislature, would not be opposed in Parliament on the analogy of the Dominion conventions. They do not seem to take note of the fact that the vetoing power statutorily given to the acceding States in the matter of amendment of the Constitution restricts the growth of conventions which would be called into aid in removing the extreme rigidity of the Act of 1935.

The political status of the provinces and States, as defined in the Government of India Act, is this: (1) the residuary powers in British India will be exercised by the Federal Government, (2) the sovereign power in British India will be exercised by the British Cabinet through the Federal Government and in the Indian States by the British Cabinet through the Viceroy as representative of the King of England.

It is true that Federation will consecrate the political unity of all India, but the federal structure as envisaged in the Constitution Act of 1935 was erected as "a counterweight to democracy in the provinces". The Imperial Government evidently encouraged an all-India

Federation because the known loyalty and conservatism of Indian Rulers were a guarantee of stability, order and resistance to subversive and revolutionary force in a self-governing India. Sir Austen Chamberlain pleaded for federation of all-India as "the interests of the Princes are intimately associated with the British Empire, just as for the same reason our interests are intimately associated with theirs." Lord Reading asked for the large proportion of representatives of the Princes in the federal legislature as "a steadying, a stabilising influence". Sir Samuel Hoare, Secretary of State for India, correctly expressed the views of the British Government when he observed: "We want the all-India Federation to be an effective Federation. We have no intention of bringing into operation a Federation which is not definitely an all-India Federation." It was made clear in the Round Table Conference debates by the representatives of the British Government that the grant of partial responsibility in the centre was dependent on the establishment of an all-India Federation. That gives the clue to the Centre remaining unreformed and to the Governor-General's Executive Councillors failing to attain Cabinet rank and responsibility, even in a limited way, through conventions. Great Britain feels it dangerous to leave the Central Government at the mercy of the autonomous provinces of British India lest the home charges, obligations of the debt, the cost of Indian defence, the cost of pensions for pensioners in the United Kingdom, should not be attended to in an approved manner. Practically, the aid of autocratic Rulers was asked for to nullify the votes of the British Indian people. The unnatural comingling of democracy and autocracy in the federal scheme has, as Dr. Keith maintains, given birth to "a bastard federalism", and he, therefore, pleads that "no State should be admitted to Federation unless it is willing to adopt the principle of responsible government and of democracy." British Indian critics have urged that the Indian Rulers must abandon their autocratic dominance in partnership

with their subjects and that the success of an all-India Federation is related to the introduction of responsible government in all the constituent units.

Sir C. P. Ramaswami Aiyar, Dewan of Travancore, raised the important point in the Travancore Legislative Assembly that the Rulers of Indian States had no power to introduce responsible government in their States without the consent of the Paramount Power. It was an unfortunate statement. Constitutionally, it rests with the Rulers themselves to decide what form of government they should adopt in their internal administration.¹ If the Paramount Power is consulted in these matters, it would tender advice without bringing pressure on the Rulers in either way. The Paramount Power may not be anxious to see responsible government established in an Indian State. That is a different issue. But even under responsible government, in the event of a clash of views between a State and the Paramount Power, the latter must prevail. Lord Lothian rightly observed: "Paramountcy certainly cannot be interpreted to mean that Great Britain has the duty of supporting a Ruler in denying to his own subjects the very rights which have been established by the authority of Parliament throughout British India".

The Indian States

A study of the Indian federal scheme brings us into direct contact with the conclusion that the limitations on the sovereignty of Indian States are not to be ignored. It would add to confusion if we insist on describing them

¹ The statement of Earl Winterton in the House of Commons on February 21, 1938, wherein it is stated that the consent of the Paramount Power is not required in initiating proposals for constitutional advance by the Ruler of an Indian State. This is repeated by His Excellency Lord Linlithgow, Governor-General of India, in his address at the Annual Meeting of the Associated Chambers of Commerce, 1938. *Vide* also the statement of Lieut.-Col. Llewellyn, Under-Secretary of State for India, on the 16th December 1938.

as sovereign States. It is not true, as is loosely stated, that the Ruler of an Indian State stands, in respect of internal affairs, on the same footing as the British Government in India. This was the stand which His Exalted Highness the Nizam of Hyderabad took with regard to the Berar controversy in 1925. The view gathers strength from the joint opinion of the Rt. Hon'ble Sir Leslie F. Scott, K.C., M.P., Mr. Stuart Bevan, K.C., M.P., Mr. Wilfrid A. Greene, K.C., Mr. Valentine Holmes and Mr. Donald Somervell submitted before the Indian States Committee 1928, known as the Butler Committee, on behalf of the Princes of India. The five eminent counsel came to the significant conclusions that (i) the Indian States possess all original sovereign powers, except in so far as any have been transferred to the Crown, and such transfer has been effected by the consent of the States concerned; (ii) it is the State and not the Crown which has all residuary jurisdiction, (iii) the right of any given State being defined by its agreement with the Crown, it follows that the Crown has no power to curtail those rights by unilateral act. The Crown is in relation to all the States the Paramount Power. Paramountcy gives to the Crown definite rights in respect of certain defined matters, *viz.*, those relating to foreign affairs and external and internal security, and it imposes upon the Crown definite duties, such as protecting the State and its Ruler against enemies and dangers, external and internal, and supporting the loyal Ruler and his lawful successors. The Princes' counsel held that the Crown had no indefinite powers or unlimited discretion, and accordingly the true test of the legality of any claim by the Crown, based on paramountcy, to interfere in the internal sovereignty of a State is in discharge of its specified rights and obligations.

Lord Reading as Viceroy in his classic letter to His Exalted Highness the Nizam of the 27th of March 1926 maintained that the sovereignty of the British Crown was supreme in India and that its supremacy existed indepen-

dently of treaties and engagements with the Indian Rulers, and as a corollary he enunciated that the ultimate responsibility for remedial action must lie with the Paramount Power if the Imperial interests are affected and the general welfare of the people of a State is gravely prejudiced by the action of the Indian Ruler in his internal government. The principle of *res judicata* cannot be applied in precluding the Crown from taking cognisance of a matter, nor can the Crown by virtue of its paramountcy be denied the general discretion to overrule the objections of the State in case of a difference of opinion with the Crown.

The standpoint of Lord Reading which comes into conflict with the opinion of Sir Leslie Scott and others gains support in law and in fact when it is remembered that paramountcy must fulfil its obligations according to "the shifting necessities of the time and the progressive development of the State". The Butler Committee did not agree with the opinion of the Princes' counsel.

The Judicial Committee of the Privy Council in the well-known Malta case of *Sammut v. Strickland* maintained that cession, even if voluntary, implied complete submission to the royal will. It is only Parliament which can limit the prerogative. Dr. Keith calls it "a hard doctrine, essentially inequitable", but its legal value can hardly be doubted. The residuary jurisdiction is thus vested in the Paramount Power.

The Indian States may in theory be sovereign States, as sovereignty is divisible, but they are not independent, being subject to the ultimate jurisdiction of the British Crown. Nor do all the States enjoy equal powers of autonomy. The Gazette Notification of 21st August 1891 laid down that the principles of international law had no bearing upon the relations between the Government of India and the Native States, and the paramount supremacy of the Government of India as representing the Crown "presupposes and implies the subordination of the Native

States.”¹ Accordingly, the Indian States “acknowledge the allegiance and subordination to and dependence upon the Crown as Paramount Power”. The position is made difficult, as the Butler Committee held that the relationship between the Paramount Power and the Princes, entered in the treaties, engagements and sanads, should not without the agreement of the latter be transferred to a new Government in British India responsible to the Indian legislature. Hence, the Government of India had to wait to settle the terms of the Instrument of Accession, the ultimate word being evidently left to the Indian Rulers. It is difficult to synthesise “the promise of the King-Emperor to maintain unimpaired the privileges, rights and duties of the Princes” with bringing the Indian States as federating units in the Federation for eventual evolution of the Indian Union as a self-governing and sovereign entity. Sir William Holdsworth significantly states that “if and in so far as the Ministers who govern British India are made responsible to an Indian legislature in that event and to that extent they are incapable of acting as agents of the Crown in their relation with the Rulers of Indian States”.

Indian Princes are avoiding Federation as recognised in the Constitution Act of 1935, primarily for the following reasons:²

(1) The States, once they federate, have no right to walk out of the Federal Union. Secession can only be sanctioned by the Imperial Parliament, but as a matter of constitutional practice, Parliament will refuse to consent to any such secession at the desire of the federating State.

(2) The Instrument of Instructions as a safeguard for the protection of the rights of the States is not enforceable in law.

¹ In the Manipur rebellion, the Government of India under the viceroyalty of Lord Lansdowne laid down their unquestioned right of interference and their authority to remove by administrative order any person whose presence in the State may seem objectionable.

² Mr. J. H. Morgan, K. C., who was consulted in 1937 by the Chamber of Princes, pointed out the dangers inherent in the entry of the Indian States to the Federation.

(3) The sovereignty of the State is very considerably impaired and wholly transformed if it accedes to Federation, although the sovereignty of the State will not be affected beyond the Instrument of Accession. The allegiance of the subjects of a Ruler of a State will be divided between the Ruler and the Federation inasmuch as they would be subjected to the federal authority. Mr. J. H. Morgan pointed out that the coercive power of the Federal Government in securing federal legislation to compel Indian States to carry out any executive obligations imposed on them is unlimited under the Act of 1935.

(4) Judicial construction may result in narrowing the rights of the States contrary to the original intention of the authors of the Act. In construing the Instrument of Accession, the negotiations preceding the accession of States to Federation are immaterial in a court of law, and the text will be interpreted on the same rules as are applicable to the construction of Statutes. This formal approach is disconcerting to the Princes.¹

(5) The dualism of the office of the Governor-General as contemplated in the Act is, in the opinion of Mr. Morgan, an artificial one, as the Crown-representative of Indian States may be influenced by the opinion of the federal legislature and federal executive where British India predominates. The apprehension of the Princes thus persists, as responsible government in the federal centre may establish conventions harmful to the sovereignty of the States even in spheres which are not parted with.

(6) The nominees of the Indian Rulers in the federal legislature will not hold their tenure of membership at the pleasure of the Rulers, and as such the Rulers will not

¹ It is to be noted that the Instrument of Accession is a final and complete limitation of the authority of the Federal Court and the Privy Council and that any fundamental change in the protected provisions of the Act of 1935 would mean the termination of the understanding embodied in the Instrument of Accession. In that event, the States would be released from indissoluble union with the Federation as established under the Act of 1935.

have the right to recall them even if the representatives fail to see to the interests of the States.

(7) The Indian Rulers do not feel sure that their interests in customs, defence, economic and other rights will be adequately safeguarded. Referring to the revised draft of the Instrument of Accession, the Chancellor of the Chamber of Princes hinted at the difficulties involved and stated: "We have to examine carefully and to ensure that the power of the States to develop their natural resources remains unaffected and that the financial implications of the scheme leave us a sufficient margin to balance our budgets and to provide funds for the growing and legitimate need of improvements in raising the standard of our administrations, and in developing beneficent activities".

As against these apprehensions may be set out the advantages to the States to be derived from the establishment of Federation, and they may be stated as follows:—

(1) Federation gives strength and stability to each acceding State: the strength of each State as a constituent part of the Indian Federation will be based on the strength of the whole organisation.

(2) The smaller States will come into prominence as they would form separate units of the Indian Federation.

(3) Every State acceding to Federation will enjoy collective security provided by all the acceding States; the rights and privileges of a particular State will be the concern of all the States joining Federation.

(4) The States will have the privilege of a voice in British Indian matters, a privilege which is undoubtedly to be valued as a great political gain.¹ The representatives of the States will get a wider field of service and greater opportunities of showing their mettle.

¹ The Joint Memorandum of the Indian delegates at the Round Table Conference, which was rejected by the Select Committee, stated, amongst many other things, that the representatives of the Indian States in the federal legislature should not take part in federal matters affecting British India only.

It is indeed unfortunate if it is a fact, as is shrewdly suspected, that the federal scheme could not be started primarily because of the unwillingness of the requisite number of Indian States to accede to Federation. The Act makes a large number of concessions to the Indian States so that no undue difficulties should have been experienced in bringing Federation into existence. Some of these concessions, which provoked very strong criticism, may be noted below:

(1) Federation cannot be started unless States aggregating 50 p.c. of their total population and half of the States competent to be represented in the federal Council of State have acceded. The tests of population and status have been applied to ensure that Federation should start with a good number of States of varying importance. The Act does not provide for obtaining consent, or for an expression of opinion, of the British Indian provinces.

(2) The Ruler of an Indian State shall execute an Instrument of Accession specifying matters to be transferred to the federal legislature imposing limitations, if any, on the federal legislature and the federal executive in respect of his State. Under the Act, federal subjects falling within the competence of the federal legislature shall be divided into two categories, the first category relating to the Indian States and the Indian provinces, and the second category relating to the Indian provinces only. The federal legislature will have power over the Indian States in respect of subjects surrendered by the Indian Princes in the Instrument of Accession. Thus the representatives of Indian States in the federal legislature will have a voice in the legislation and administration of subjects affecting the Indian provinces unless a convention after the precedent of Scottish legislation in the House of Commons is established whereunder representatives from Indian States would abstain from voting when matters concerning exclusively the British Indian provinces are considered.

(3) Section 6 (5) of the Act of 1935 provides that the structure of the Constitution in respect of Federation cannot be altered without the consent of the Rulers. The Solicitor-General explaining sub-section 5 of Section 6 states: "If the structure were to be altered in fundamental respects, of course the States would clearly have the right to say: This is not the Federation to which we have acceded". This provision operates as a fetter on Parliament and makes India's constitutional progress dependent on the good will of the Rulers; the State would evidently be the ultimate judge if the "accession of the State" is affected by any amendment. It gives an indirect route for the States to walk out of Federation as the Princes have acceded to "the Federation as established under this Act" in terms of Section 6 (1) (a).

(4) The broad principle of the Federation as envisaged in the Act of 1935 is that "the Ruler shall remain ruler of his State and his subjects shall therefore remain his subjects". It is the business of the Ruler to ensure the enforcement of the provisions of the Act in his State [*vide* Section 6 (1) (b)]. All the federal authorities established for the purposes of the Indian Federation shall be subject to the terms of the Instrument of Accession.

(5) In the federal Council of Ministers the Governor-General is instructed to secure representation of the federated States and foster a sense of joint responsibility amongst his Ministers (Article 8 of the Instrument of Instructions). Thus the representatives of the federated States who are nominees of the Princes will be admitted in the Cabinet on the same footing of equality with the Ministers from elected representatives of British India, a position which is not in accord with the principle of parliamentary government.

(6) His Majesty's Representative shall have to be given money out of the federal revenue for the discharge of the functions of the Crown in its relations with the Indian States, including payments in respect of any customary

allowances to members of the family or servants of any former Ruler (section 145).

(7) The remission of cash contributions payable by the States over a period not exceeding twenty years is provided for on their agreeing to join Federation subject to specific limitations in sub-section 3 of Section 147. The cash contributions represent the sums which were paid by the Princes under the treaties in return for the general protection from the Crown.

(8) The administration of federal Acts in the federated States is to be secured by an agreement between the Governor-General and the Rulers of federated States. It is the Governor-General acting in his discretion and not the federal Government that is charged with proper enforcement and execution of the policy of the federal Government.

(9) The incidence of the sea customs duties falls upon the consumers both in the Indian States and in British India. But the Indian States have at present no say in fixing the Indian tariff. Even the maritime States cannot fix import duty without reference to the rate in British India. With their entry into Federation the States will take active part in the determination of the Indian tariff, a privilege which they asked for as was evident from their claiming a share in the proceeds of the increasing import duties.

(10) Corporation tax is not to be levied by Federation in a federated State within ten years from the establishment of the Indian Federation. It is favoured treatment to the industries in the federated States.

The Government of India Act 1935 does not lay down a constitution which is capable of expansion and development in response to forces from within. India cannot attain responsible government, far less the conventions of the Dominions, within the framework of the Act. It is "an instrument by the wise use of which India can take a great stride forward towards the attainment of the aims set out in the preamble to the Government of

India Act 1919". The preamble, which gives statutory expression to the announcement made in the House of Commons on the 20th August 1917 by the Secretary of State for India, refers to the gradual development of self-governing institutions. The ultimate goal is to be achieved by "successive stages", and the "time and manner of each advance can be determined by Parliament". The Constitution Act of 1935 is to be taken as a substantial step in the direction; it contains no provision to bring India to its final stage. The Indian legislature under the Act of 1935 cannot reform itself, nor can it press Parliament to introduce the desired reform. Any effective constitutional advance by an amendment of the Act cannot be achieved without the consent of the Rulers of federated States. The measure is sacrosanct, and the hope of automatic constitutional advance is destroyed in toto.¹

The Joint Parliamentary Committee in their report, 1933, state their conviction that "a specific grant of constituent powers to authorities in India is not at the moment a practicable proposition" and that "the main provisions of the Act should remain unaltered for an appreciable period". The absence of constituent powers in a Constitution Act reacts unfavourably on the political development of the country and accelerates the pace of extreme movement outside the legislatures. It shows insensibility to new forces as the Constitution fails to grow in line with the new desires in society. The Act merely permits the Indian legislatures to pass a resolution recommending alterations in (1) the size or composition of the Chambers of the federal legislature, or the method of choosing or the qualifications of that legislature without varying the proportion between the number of seats in the Council of State and the Federal Assembly or the proportion allotted to British India and Indian States; (2) the number of Chambers, the size or composition of the Chambers

¹ This point of view was urged by Colonel Wedgwood in the debate in the House of Commons on the Indian Constitution Bill.

or the method of choosing or the qualifications of members of a provincial legislature; (3) the franchise qualifications of women, (4) qualifications entitling persons to be registered as voters for the purpose of elections. Even this little power of recommendation with an elaborate procedure, provided for in Section 308, can be exercised only after the expiry of ten years from the inauguration of the Constitution.

Some of the provisions referred to are covered by the Communal Award of 4th August 1932, as modified by the Poona Pact on 25th September 1932, and the Communal Award can be upset by Parliament before the scheduled period of ten years is out. There is the British Government's declaration that there is no intention of altering the Communal Award except with the agreement of the communities themselves. Parliament is not bound by such declaration, nor is it hindered by the prohibition operating on the Indian legislature. It is only Parliament to which we have to look for liberalizing the constitution. But the Indian Federation as contemplated can hardly be reformed by Parliament. The Indian States according to the Act are outside the sovereignty of Parliament. The provisions of Part II of the First Schedule regarding representation of States in the federal legislature cannot be altered without the consent of the Rulers of the States concerned. The Second Schedule contains provisions which exclusively affect British India, and such provisions can be amended by Parliament. But in terms of Section 6 (5), Parliament cannot amend those provisions which affect the States without the consent of their Rulers. The Instrument of Accession is taken as a treaty, and any change striking at the basis of the Instrument results in the breakdown of the agreement. The Act, in effect, states that the representation of States in the legislature and the reservation of certain departments in the federal centre from ministerial control and the exercise of powers by the Governor-General in his discretion, all this being essential

to the Federation to which the States would accede, cannot be altered by Parliament without the consent of the Rulers of the federating States. If the "protected" sections of the Act are amended, the Instrument of Accession is voidable, though not void. The Princes are, in that event, free either to stay in or walk out. Section 6 (5) of the Government of India Act operates as a fetter on the powers of Parliament as does Section 4 of the Statute of Westminster. But the Statute of Westminster places restrictions on the Imperial Parliament's power to affect the powers of Dominion Parliaments without their consent whereas the Government of India Act limits the powers of Parliament to make the Indian Federation expansive and the Indian legislature responsive to healthy conventions and statutory modifications towards the extension of the principles of self-government.

The Opposition of Different Parties

The federal scheme, reactionary as it is, encountered opposition from the different parties for different reasons. It is instructive to study their grounds of opposition as they give a clue to the future of a federal scheme for all-India. The conflicting ideologies inspiring the parties in their opposition to the federation of India give an unfortunate impression that the political system of all-India could hardly be built upon mutual trust and agreement. The spirit of compromise is absent, and the points of agreement are not impressive, as the interests of India are not generally placed above party considerations. A brief analysis of the attitude of the Congress, the Liberal Federation, the Hindu Mahasabha, the Moslem League and the Indian Princes is given below.

The Indian National Congress stands for the integrity and unity of India; it considers the Indian States as an integral part of India, which cannot be separated, and stands for the same political, social and economic freedom in the States as in the rest of India. Purna Swaraj is for

the whole of India inclusive of the States. Such a political philosophy is helpful for federation. It is true that the Congress will fight for full responsible government and guarantee of civil liberty in the States, but it persisted in the policy of non-interference in the internal affairs of the States. The Congress was only ready to extend moral support and sympathy to the internal struggles of the States. The Tripuri session of the National Congress in March 1939 noted that the great awakening which was now noticeable in the States might lead to relaxation or complete removal of the restraint which the Congress had imposed upon itself.

The Congress is not opposed to the ideal of federation; it opposes the federal scheme as envisaged in the Government of India Act 1935. It holds that the Indian States' participation in Federation should approximate to the provinces in the establishment of representative institutions, responsible government, civil liberties and the method of election to the federal legislature, otherwise Federation will, instead of building up Indian unity, encourage separatist tendencies and involve the State in internal and external conflict. In the opinion of the Congress, a real federation must, even apart from the question of responsibility, consist of free units enjoying more or less the same measure of freedom and civil liberty and representation by the democratic process of election.¹ The Congress really objected to the grant of authority to irresponsible Rulers of States to administer the affairs of British India.

It is true that the Congress came out openly in the field to wreck the federal part of the Constitution Act 1935, but the continuance of irresponsible government at the centre was becoming intolerable, and the all-India Congress Committee at its session in September 1938 gave a warning that "any further continuation of unreformed government at the Centre might precipitate a crisis which

¹ Resolution of the Congress Working Committee at Wardhaganj, February 1938.

all desire to postpone, if at all possible." It is really impossible for the Governments of the provinces to function with self-respect if an irresponsible but increasingly active Central Government continues to sit over them in all important matters, unwilling and unable to throw off the force of habit and the conventions of previous practice.¹

The Nehru Committee scheme, adopted by the National Convention in Calcutta in December 1928, proposed that the Commonwealth of India should have the same constitutional status in the British Empire as the self-governing Dominions. The federal ideal was not brought out in all its attractive features, and it was given out that "the Commonwealth shall exercise the same right in relation to, and discharge the same obligations towards, the Indian States, arising out of treaties or otherwise, as the Government of India has hitherto exercised and discharged".

In the Gandhi-Irwin agreement of 1931 the Congress stood committed to the principle of all-India federation and of Indian responsibility and reservations or safeguards in the interests of India for such matters, as, for instance, defence, external affairs, the position of minorities, the financial credit of India and the discharge of obligations. As a result of this agreement, Mahatma Gandhi attended the second session of the Round Table Conference in London on behalf of the Congress. Mahatma Gandhi's efforts in London failed; he could not improve the situation at all. The Congress took no part in the subsequent stages leading to the Act of 1935. To quote the phraseology of the Congress, the Act of 1935 and the policy are intended "to tighten the hold of British Imperialism on India and to continue the exploitation of the Indian people". The Congress entered the legislatures under the Act of 1935 to fight the new Constitution, to resist the introduction and

¹ Such a complaint was made by the Chief Minister of Madras, Mr. C. Rajagopalachari, in presenting budget estimates for 1939-40 in the Madras Assembly.

working of the federal part of the Act, and to lay stress on the nation's demand for a constituent assembly.

The all-India Congress Committee at its Calcutta session in 1937 called upon the Ministries to prevent the imposition of Federation "which will do grave injury to India and tighten the hands which hold it subject to Imperialist domination and reaction". They asked the Congress Governments in the provinces to move resolutions opposing Federation and requesting the British Government not to impose it. The Congress Governments in the provinces moved and passed resolutions in the provincial Assemblies expressing their definite opinion that "the Government of India Act 1935 in no way represents the will of the nation and is wholly unsatisfactory as it has been designed to perpetuate the subjection of the people of India and that this be repealed and replaced by a Constitution for a free India framed by the constituent assembly elected on the basis of adult franchise which may allow the Indian people full scope for development according to their needs and desires."

The National Liberal Federation of India is definitely of the opinion that the Constitution embodied in the Government of India Act of 1935 is utterly inadequate and retrograde in many respects, and includes features which do not meet with the approval of Indian nationalists. This body stands by the principles of federation for the whole of India. In respect of the federal part of the Constitution Act, it asked for changes on the following lines at its Bombay session in January 1939:—(a) securing for the subjects of the States the right of election of States' representatives; (b) doing away with safeguards in respect of monetary policy and commercial discrimination; (c) introducing direct election for members of the Federal Assembly by provinces; (d) making the Constitution elastic to attain Dominion Status within a reasonable period of time. It also recorded its decision that an irresponsible Centre with

responsible provinces was untenable and urged for an early introduction of federation.

The Liberal Federation believes that the enactment of a federation for all India was a distinct step forward towards the attainment of Dominion Status; it trusts in the silent influence of public opinion. Accordingly, it has urged that the Constitution Act of 1935, even in its federal part, should be utilised to the best advantage of the people, for the amelioration of their social and economic condition and for the attainment of Dominion Status. It was definitely opposed to multiplying the concessions to the Princes in the course of negotiations at the expense of the federal Government.

The political programme of the Hindu Mahasabha was practically borrowed from the philosophy of constitutionalism which forms the bedrock of the Liberal Federation. The Hindu Mahasabha¹ puts on record its deliberate opinion that "inspite of the defective and unsatisfactory character of the Constitution, the Hindus should utilise whatever powers are provided under the Act in the interests of evolution of Hindusthan as a united nation and urge the Government to expedite the introduction of Federation." The Hindu Mahasabha was also convinced along with the other political bodies, such as the Congress and the Liberal Federation, that "provincial autonomy will not work with smoothness unless responsibility was introduced in the Centre". It also requested the Indian Princes to grant full citizenship rights and facilities for responsible government within their States but the refusal of co-operation to a federal scheme wherein the Indian States are not to enjoy an amount of responsible government on the lines of the British Indian provinces was never a serious issue with the Mahasabha.

The all-India Moslem League is opposed to the federation as contemplated in the Constitution Act. It

¹ Hindu Mahasabha Conference at Ahmedabad, December 31, 1937, and January 1, 1938.

objects to the federal part mainly on the ground that there is a Hindu majority in the federal Centre. It fights for equal representation in the Centre on the basis of the two-nation theory. Mr. Jinnah feels that "the Hindu mind is that they should dominate the Moslems and the Moslem mind is that they should rather die than be dominated by the Hindus"¹. The Council of the Moslem League at its New Delhi session objected to the federal part because it allowed a permanent hostile communal majority to trample upon their religious, political, social and economic rights. Before the Act of 1935 was conceived, the Moslem League urged Mr. Jinnah's famous fourteen points wherein the Moslem claim put forward was a federal constitution for India, the residuary powers being vested in the provinces, and one-third representation of Moslems in the central legislature. The fourteen points were later modified into higher demands, and British sympathy for Moslem demands is an important factor in Indian politics.

The Moslem League has opposed the Congress claim to frame India's constitution with the help of a constituent assembly, elected on the basis of adult franchise. Mr. Jinnah favours a Convention or Conference elected on the basis of the electorate as provided in the Communal Award in the absence of an agreement to the contrary, and he further holds that the rights and interests of Moslems and other minorities should be effectively safeguarded with the consent of the communities concerned.² The Congress definitely holds that no permanent communal solution is possible except through a constituent assembly where the rights of all recognised minorities will be fully protected by agreement between the elected representatives of various

¹ Mr. Jinnah's speech at the Lucknow session of the all-India Moslem League, October 1937.

² Mr. Jinnah's amendment on the resolution moved by Mr. Satyamurti in the Central Assembly on the 17th of September 1937 recommending that the Act of 1935 should be replaced by a Constitution framed by the constituent assembly on the basis of adult franchise.

majority and minority groups or by arbitration, if agreement is not possible, and that any other alternative will lack finality.¹ The Congress demand for a constituent assembly on the basis of adult franchise, irrespective of castes and creeds, is thus toned down to make a realistic approach to Indian politics. The two-nation theory was crystallised in the resolution of the Moslem League at its Lahore session on the 23rd March 1940, but the idea germinated in the Sind Moslem League Conference at its Karachi session in October 1938, presided over by Mr. Jinnah. The Sind Conference also asked for the division of India into two federations, a Federation of Moslem States and a Federation of non-Moslem States. It also contemplated the admission of the Moslem Federation to any other Moslem State beyond India's frontier and guaranteed such safeguards for non-Moslem minorities as might be conceded to Moslem minorities in the non-Moslem Federation of India. The spirit indicated in this resolution was one of lack of toleration and of distrust in the Hindu majority and the very same spirit marked the famous Lahore Resolution, which forms the basic creed of the Moslem League at the present moment. Mr. Jinnah wants to divide India into autonomous national States, as "Muslim India cannot accept any constitution which must necessarily result in a Hindu majority government". That forms the main inspiration of his opposition to the all-India Federation. To establish his case, Mr. Jinnah has enunciated that Moslems are a nation and not a community and that democratic government based on the party system, as is found in Great Britain, is not suitable to the conditions of India. Mr. Jinnah claims that the Moslem League is the sole representative of the Moslems of India and that no constitution would be acceptable to them unless it had the seal of approval and consent of the Moslem League. Its resolutions give the impression that the all-India Federation can be acceptable to Moslems, provided the power in

¹ Congress Working Committee Resolution, March 1, 1940.

the Centre is equally divided between Hindus and Moslems. If the claim for an equal division does not materialise, the Moslem League will stick to the Lahore Resolution which seeks to divide India into communal zones. As time rolls on, Mr. Jinnah's opposition to any form of Central Government on the basis of India as a unified entity is growing. Today he stands by Pakisthan.

The joint Conference of Indian Princes, representatives of Indian States, and States' Ministers¹ met in Bombay in June 1939 and adopted the following resolution: "The Conference of Princes and Ministers assembled at Bombay considered the revised draft Instrument of Accession and connected papers and resolves that the terms on the basis of which accession is offered are fundamentally unsatisfactory in the directions indicated in the Report of the Hydari Committee of Ministers and confirmed by the recommendations of the Gwalior Conference and are therefore unacceptable. At the same time the Conference records its belief that it could not be the intention of His Majesty's Government to close the door on an all-India Federation".

It is interesting to find that the Committee which met under the chairmanship of the late Sir Akbar Hydari, Prime Minister of Hyderabad, came to the conclusion that the terms of the draft Instrument of Accession were unsatisfactory from the point of view of treaty rights, internal administration rights and economic rights of the States. The revised draft did not, in the opinion of the Princes, provide for the safeguards as asked for. The Hydari Committee, however, reiterated the conviction that "there is in fact no alternative ideal for India except that of an all-India Federation, provided it ensures all the essential safeguards advocated by the Committee and offers effective assurance of continued autonomy and integrity of the States". The

¹ The Chamber of Princes has a Standing Committee of 35 Princes; there is a Standing Committee of Ministers to whom technical work is entrusted. They look to the interests of the States.

Princes ask for sufficient security in matters of defence, customs, railways, industries and excise duties and for the guarantee that the treaty rights could not be encroached upon by unilateral action of the federal Government.

In this context, it may be stated that the interests of the bigger States and the smaller States do not converge on the same channel with regard to Federation. Some of the smaller States can hardly function usefully without a prop. On the 15th of April 1943 a communique issued from New Delhi announced that the Crown Representative (since April 1, 1937, the Viceroy, in his relations to the States, acts not as Governor-General but as representative of the Crown) had decided upon, with the approval of the Secretary of State for India, a scheme of qualified merger of small Indian States with the neighbouring larger ones with whom they have geographical, economic and political affinities. The changes proposed are immediately concerned with the small States of Guzerat and Western India, but there are indications in the communique to suggest that ultimately all small States throughout India will be affected by them.

Postponement of Federation

It is extremely unfortunate that provincial autonomy, so far as it was granted by the Act of 1935, was launched without a federal link at the centre, broadbased on popular opinion. The establishment of Federation being delayed, the centrifugal force in the country has been fully at work, charged with explosive for breaking up India into fragments. Sir Samuel Hoare, Secretary of State for India, stressed very strongly that "it would be extremely dangerous to leave the Centre unreformed and at the mercy of these great autonomous provinces whose chief object would be to extort more revenues from the unreformed Centre." But the British Government have allowed the provinces to grow up with a strong provincial feeling unredeemed by a responsible Government in the federal centre. This

has discredited the Constitution Act of 1935 to a degree. The Government of India criticised the Simon Commission's proposal for a non-responsible Executive at the Centre confronted by an irresponsible elected legislature as being destructive of strong central government. The Executive would suffer from the loss of public credit and confidence through conflict with the legislature. But since the 1st of April 1937, when provincial autonomy under the Act of 1935 was ushered in, there had been no constitutional change in the Centre. The existing disharmony between the Central Legislature and the Central Government has "tended to sap the efficiency of both." The central legislature is, at present, a debating society, whose members have no chance to provide an alternative Government and whose opinions are uninformed by the experience of power and where support of the Government policy is generally regarded as a betrayal of the national cause. The alliance between an irresponsible Centre and responsible provinces is unnatural, and the absence of harmonious co-operation between the Centre and provinces is apparent.

That the delay in the launching of the federal scheme has been to the prejudice of the interests of India as a whole became evident when the War caused grave danger to the security of India. Lord Linlithgow frankly but sorrowfully stated the position in December 1941: "Had we been able, before the outbreak of the war, to have brought Federation into being so many of the problems that confront us now would have been solved. No better constitutional basis could have been found on which to develop the efforts of British India and the Indian States in a partnership which would I believe have been as fruitful a source of unity and concord in the years to come as of military advantage in the issue that immediately confronts us".

It will remain a puzzling question to students of constitutional history how far the opposition of British India or of Indian States contributed to the suspension of

the federal scheme, as envisaged in the Act of 1935. It was given out by the authors of the Act that Federation is an integral part of provincial autonomy and that there should be no undue delay in launching the federal scheme after the introduction of provincial autonomy. In fact, Lord Linlithgow and other Government spokesmen told us again and again that the spade work to bring the federal scheme into operation was far advanced. But the British Government were careful to point out that (1) the States are as essential an element in a Federation of India as are the provinces of British India, (2) the decision in the matter of accession to Federation must rest with the Rulers themselves; (3) no pressure will be brought upon the Rulers of Indian States to decide what form of government they should adopt in the diverse conditions of Indian States. On the other hand, responsible statements were made in the House of Commons that no changes or modifications were contemplated in the scheme of federation embodied in the Act of 1935. The official explanation offered through the Viceroy was that the suspension was necessary "to concentrate every atom of our energy on the prosecution of the war to the exclusion of all other matters."¹

After the outbreak of war in September 1939, Lord Linlithgow established personal contact with 52 political leaders representing different parties and interests to discover the extent of Indian co-operation in the prosecution of the war, and thereafter he made a memorable announcement on the 18th October 1939 that the work of the federal scheme had been suspended and that the British Government would, at the end of the war, be prepared to regard the scheme of the Act of 1935 as open to modification in the light of Indian views. The old unresponsive attitude of going on with the federal scheme, as embodied in the Act of 1935, and of meeting the wishes of Indian Rulers only without regard to the claims of the

¹ Viceroy's Address, 10th January 1940.

political parties of British India was gone at the first whiff of war, and the Governor-General of India was authorised by His Majesty's Government to announce that "at the end of the war they will be very willing to enter into consultation with representatives of the several communities, parties and interests in India, and with the Indian Princes, with a view to securing their aid and co-operation in the framing of such modifications as may seem desirable" and that the future constitutional development and position of India was "Dominion Status".

The chief reason for the non-application of the federal provision of the Act lay in the fact, as was pointed out by Mr. Amery in the House of Commons on the 14th of August 1940, that the delay "afforded occasion for the development of a volume of adverse criticism and opposition in the face of which their enforcement could no longer serve the purpose for which they were originally devised". The delay was occasioned by the bargaining attitude of the Rulers of Indian States and the decision of the British Government that the Rulers would not be subjected to any influence favouring a particular mode of action.

It is true "the Congress Party objects on grounds of egalitarian democracy to the influence which the Act concedes to autocratically governed States. The States on their side have shrunk from the extent of interference in their affairs conceded to the elected majority in the central legislature. The Moslem community refuses to entrust its fate to the control of a permanent Hindu majority". These objections are all sincerely held and deeply felt; these differences are undoubtedly to be bridged. History provides examples that "a self-contained and self-governing State cannot survive if the elements which compose it are unwilling bed-fellows." In the task of framing a constitution, there is need for antecedent agreement between the geographical units and between the racial elements. But such an agreement can be forthcoming only if the basic

issues are accepted,¹ viz., (i) it is of the essence of a democratic constitution that ultimately the popular will shall prevail; (ii) the democratic machine can be worked only with a majority decision in some form; (iii) the parties concerned should be left free to come to an agreement based upon mutual confidence and trust. The British Government are not helpful in the matter of securing agreement amongst the principal elements in India's national life by their insistence on the due fulfilment of "the obligations which Great Britain's long connection with India has imposed on her" and of "the responsibilities which the course of history has imposed upon it in India".² These "obligations" and "responsibilities" differentiate the case of India from the Dominions of the British Empire where agreement was sought and arrived at without external interference, and where a sort of "corporate sense" was born through the free "impact of mind upon mind". There was no antecedent declaration made by the British Government with regard to the Dominions, as is found in respect of India, that His Majesty's Government would not transfer power to any system of government which is denied by powerful elements in the national life of the country concerned, nor was His Majesty's Government a direct party to the multilateral agreement reached after free and full deliberation in the Dominions.

The British Government in India, however, feel that they cannot dissociate themselves from the shaping of the future constitution of India. There are treaties with the Princes which are to be respected; there is the British stake in India which has grown out of historical forces; there is defence in which Great Britain is directly interested; there are obligations towards the minorities which are embedded in the very texture of the tapestry of history; there are obligations for the defence of India until she

¹ Address of Sir Maurice Gwyer, K.C.B., K.C.S.I., Chief Justice of India, at the 22nd Convocation of the Benares Hindu University.

² Speeches of Sir Samuel Hoare, Lord Zetland, and Mr. Amery on the Indian Constitutional problem.

is in a position to take over the burden unaided, and the presence of British forces in India requires that the British Government cannot but retain a measure of control over them. In giving these reasons, Lord Zetland stated in the House of Lords on the India Debate on the 8th of April 1940 that "they are rooted in the history of the past 200 years, and however much you might like to do so, you simply cannot wipe out history and treat events recorded in its pages as if they had never occurred". Similar arguments were not put forward in the case of Canada, South Africa, and Ireland where racial and religious differences were not non-existent and where the theory of British trusteeship was not pursued as an inherent obstacle to the grant of responsible government.

CHAPTER IV

RESPONSIBLE GOVERNMENT IN THE PROVINCES

The Government of India Act 1919 was "to design the first stage in a measured progress towards responsible government." The policy of gradualness arose from the theory that "the electorate must grow" and that "practical experience in the conduct of public affairs must be enlarged". In the intervening period, it was the British case that the Governor-General in Council should "remain in undisturbed responsibility to Parliament." The British believed it to be "a generous opportunity" offered to Indians. With the British Government, the Montagu-Chelmsford Reforms of 1919 interpreted the pronouncement of 20th August 1917 "with scrupulous accuracy"; with Indians, the scheme evoked apprehensions. The Joint Select Committee reminded the people of India that the announcement of the 20th August 1917 spoke of "a substantial step in the direction of the gradual development of self-governing institutions" and "not of the partial introduction of responsible government." It was a distinction, made undoubtedly not with a generous spirit. The Government of India Act 1935 adhered to the announcement of August 1917 and gave a further instalment of reforms towards the growth of self-governing institutions. The Act was not self-sufficient for the growth of full responsible government.

Pre-Requisites of Parliamentary Government

Representative government to be effective and successful must have its roots in the historical traditions of the country and enlightened liberalism of the people. To deserve it one must earn it. In India, the representative government, as established by the Constitution Act of 1935, is not born of any revolution or of a civil war; it has been

introduced by an Act, conceived in England, drafted at Whitehall and delivered to us as parliamentary legislation. The co-operation of Indians was sought, but their counsel did not prevail. The proceedings of the three Round Table Conferences, 1930-1932, established that India's voices were discordant and that real power lay with the British Government. The memorandum of the Indian Delegation which represented the maximum measure of agreement amongst the political parties in the third Round Table Conference did not form the basis of the Constitution Act of 1935. Thus the Act had many features which were not acceptable to any of the parties, and the flowering of representative government on such a barren soil is not to be expected. The fundamental hindrances to the working of representative government in India are that (1) the whip hand in the governance of India lies with the British Government; (2) the political parties grow and gain strength in opposition to the interests of the British Government; (3) it does not constitute the right and duty of the political parties to carry on, or to assist in, the administration of the country; (4) the Government, as established, has not the competence to satisfy the aspirations of the people even in a limited way. Under the load of these basic imperfections, representative government cannot function smoothly and usefully.

The other two factors retarding the growth of parliamentary rule are (1) the obstinacy of the majority parties in having their own way, and (2) the unwise actions of the minorities in transcending the bounds of legitimate opposition and defying the decisions of the electorate.

As we are situated, there is that brooding dissatisfaction with the Constitution which is to be worked. The Indian National Congress fought the elections in terms of conflict and entered the legislatures with the avowed purpose of wrecking it. There was no agreement amongst the various political parties on the fundamental issues; they were rather determined to change the Constitution Act on

various grounds; the habit of tolerance and the method of working peacefully in the pursuit of party government were eloquently absent. The pre-requisites of successful representative government were lacking.

Constitutional principles, it is well known, do not operate in "a vacuum of abstract reason." They are shaped to the purposes which people seek to achieve; they are tuned to secure the ends for which the people ask. If parliamentary government, charged with British formulæ, does not operate in the desired manner, this is not to be surprised at. The traditions of the country, the genius of the race, the political aspirations of the people, the growth of political consciousness, all contribute to the success or failure of representative government. The strength or weakness of parliamentary government is measured by its capacity to satisfy the wishes of the electors. "Nothing is more dangerous in a democratic State than a condition in which the people is persuaded that the fundamental instruments of its government are not equal to the tasks imposed upon them." The present Constitution Act suffers from that imperfection.

It is also to be recognised that the conventions of the Constitution, on which much emphasis is laid, are "vague in form and imprecise in substance." "Their binding and sacred nature" depends upon the agreement of parties. If the majority controlling the apparatus of the State refuses to respect the conventions, there is no help. But such an uncompromising temper is fatal to parliamentary government. In Great Britain, many of the fundamental rights of the people rest upon constitutional conventions. It is their genius for compromise that takes the vessel of parliamentary government through the storm of party strife. The temper of all nations is not the same, and accordingly, the success of parliamentary government resting more on conventions than on rigid and legal rights is not similar everywhere. In India, the prospects of parliamentary government are prejudiced by the lack of historic traditions and by

growing intolerance amongst the parties, if the fundamental defect of the ministerial power of the country proving inadequate to increase its national wealth for the purpose of satisfying the increasing grievances of the people is not taken into account.

We are living in a "marginal" period of history, marginal in the sense that the expectations of the people, based on a particular class-relation, are being challenged in their fundamentals, and in such intemperate climate parliamentary government which is after all a government by consent and adjustment is put to the hardest test. The menace is discernible in the antithesis of the views held by the different political parties. All this is to be taken note of in assessing the working of responsible government in our country.

Cabinet government in England is the consequence of parliamentary government; it is founded not on laws but on practices. The Cabinet and the Prime Minister are an extra-legal development, although they form the core of the British constitutional system. In the Act of 1935, there is no mention of the Prime Minister or the Chief Minister who would co-ordinate the machinery of government, nor is it obligatory on the Council of Ministers to act collectively so that the desired integrating unity in their work may be obtained. But the Governor is definitely instructed by the Instrument of Instructions to encourage the appointment of a Chief Minister and a sense of joint responsibility among the Ministers. It is true that the Governor will select his Ministers and that he will see that the members of important minority communities are, as far as practicable, represented in the Council of Ministers, but all this is to be done in consultation with the person who is likely to command a stable majority in the legislature. There is no such instruction that the Governor will form a coalition Government; all the Ministers can be recruited from the majority party, and the instructions will be duly followed if all classes of the

population are given a due share in the government of the province.

The Governor's task is to secure a stable Government; he is not to form a Government which is to formulate policies to his liking. He is not to take part in party warfare. Ordinarily, he is left with no alternative but to call in the leader who commands the majority support in the legislature. The Minister will recommend his colleagues; it is the Governor who technically appoints them. Constitutionally, the Chief Minister has the final word in the selection of his colleagues; it is his responsibility to secure a stable Government. If the Governor interferes and the Chief Minister submits, that is a departure from constitutional government. To try to keep out the leader of the majority party in the legislature is to take sides in a party issue, and such an attempt on the part of the Governor is unconstitutional. "Government is the duty as well as the right of the majority party." In a parliamentary system the real duty of the Opposition is to work it by criticising the Government and agreeing to undertake the responsibility of forming a Government if the party in power loses confidence of the House. It is essential that the Cabinet should be formed, and the Cabinet must remain until its successors have been appointed. "The minority agrees that the majority must govern, and the majority agrees that the minority should criticise." It is in this background of agreement that parliamentary government is carried on. The Indian political field did not provide the needed background.

The consequences of Cabinet government are that (1) Ministers owe responsibility to the legislature; (2) they are united by loyalty to the Prime Minister; (3) the majority decision is binding on all of them; (4) all ministerial offices are placed at the disposal of the Prime Minister. The Prime Minister, it may be noted, is the keystone of the Cabinet arch. It is the Cabinet which is the final arbiter of policy in a parliamentary

system, and it is that very Cabinet which is in practice formed by the Prime Minister and dismissed by the Prime Minister on his advice; he can force dissolution of the Cabinet by his advice; he can force dissolution of the Cabinet by his personal resignation. Whether the Prime Minister dominates the Cabinet or not depends on his character and personality. Formally, all members of the Cabinet "stand on an equal footing and speak with equal voice", but the exceptional and peculiar authority of the Prime Minister cannot be doubted.¹ In the last analysis, "the office of Prime Minister is what its holder chooses to make it."

If the Act of 1935 is made to vibrate with the desire of furthering the principle of Cabinet government, it is not unlikely that the office of Chief Minister will have added prestige of its own, primarily for the reason that he is the party leader who is trusted and who has the right to be consulted on major problems by the other Ministers. He functions as the leader of Government in the legislature. But the Indian Constitution Act, read together with the Instrument of Instructions, makes the Finance Minister "a sun around which planets revolve," as he is to be consulted upon any proposal which affects the finances of the province.

The supremacy of the Cabinet is traceable to the following causes:

(1) it finally determines the policy to be placed before the legislature; (2) it assumes the supreme directing authority over the executive in accordance with the policy prescribed by the legislature; (3) it co-ordinates and delimits the authorities of the several departments of the State.

¹ Sir Robert Peel said: "Under all ordinary circumstances, if there was a serious difference of opinion between the Prime Minister and one of his colleagues, and that difference could not be reconciled by an amicable understanding, the result would be the retirement of the colleague, not of the Prime Minister." (quoted by W. J. Jennings in "Cabinet Government", p. 163).

Governor in a province is undoubtedly the chief executive on whom the final responsibility for legislation and administration rests. The character of responsible government in a parliamentary system is evolutionary, and as such the transfer of authority from the Governor to the hands of Ministers takes place through healthy practices on the basis of Cabinet supremacy. The Cabinet is primarily a policy-formulating and a general controlling body, and as it accepts the final responsibility for all political acts, it is the right and duty of every Minister to consult the Cabinet on all major issues. Urgent matters are often put through on the Prime Minister's authorization.

It is an inevitable growth that every Cabinet must have an inner Cabinet, consisting of leading Ministers, although all Ministers are formally equal. There are Ministers who will by dint of exceptional talent, experience and personality constitute an inner council directing the Ministry as a whole.

In parliamentary government, it is the Cabinet which rules. The legislature exists to give approval to the policies placed before it by the Ministry. The legislature, apart from carrying out the intentions of the Ministry, has another important function. It affords an opportunity to the Opposition to criticise primarily with a view to educate and influence public opinion, rather than with a view to modify Government policy. The Ministry of the time has a majority, but the function of the Opposition is to criticise and not to govern. The Opposition criticises so that in the next election it may obtain a majority to form the Government. The legislature provides the forum for the discharge of the historic function of the Opposition. It is said that "the House is its platform, the newspapers are its microphones and the people is its audience." If this role of Opposition is suppressed or restricted, it involves derogation from parliamentary government and seeks to instal dictatorship. The Opposition must be given

unfettered right to criticise. The restriction of discussion on the plea of the public interest should not be arbitrary. Freedom of discussion and freedom of association are the basis of democracy. "The dogs bark in Parliament; if there were no Parliament, they might bite." This is the hard, ineluctable fact that political power rests on public opinion.

It was explicit in the resolutions of the Imperial Conferences of 1926 and 1930 that the King should be directly advised by the Dominion Government on the same footing as that of the United Kingdom and that the relation of the Dominions with the King is essentially the same. In the United Kingdom, the people owe him allegiance, and the King is their constitutional head. It is not to be doubted that the King can spread his influence by his intimate relations with the Prime Minister and other members of the Cabinet, but for every act of his there must be ministerial responsibility. The King is entitled to the fullest information on matters which he is to approve; he discusses them fully, raises objections and suggests changes, but in the event of the Ministry persisting, he is to give in. His share in government is personal, and, in many cases, real. This personal touch is lacking in the case of the Dominions. Accordingly, his royal functions in internal matters are delegated to the representatives, and even in external matters where the King is to act on the advice of the Dominion Ministry, the right of discussion and suggestion does not play any part.

The Crown's position in the Dominions is complicated by the fact that each Dominion is autonomous, and each may have its own foreign policy which may be conflicting. The consistency of action may be imperilled in future, and such a position would be embarrassing for the King. The tie of allegiance to the Crown binds the Dominions whose nationals enjoy British nationality.

It is only through the King-Emperor that the link between the States and British India is established. Even if the States come into a federation with the British Indian

provinces, the provinces will look to the Crown for the preservation of their rights which would not be placed within a federal control. Under the Constitution Act of 1935, all governmental powers in India are exercisable by the King who will be associated in an increasing degree with the development of constitutional rule in India. The common allegiance to the Crown secures to the people of India equality of treatment in the other parts of the Empire. But in the Dominions the position of Indians is very unfortunate. The dignity of the Crown requires, to quote Mr. Gladstone, that it should never come into contact with the public, or with the Cabinet, in mental deshabille. The Crown can discuss and exercise influence by personal discussion, but in the end the Sovereign acts upon the advice of Ministers. It is a well-established tradition of two hundred years, as Mr. Asquith put it in 1913. The dissensions in the Cabinet are of no concern to the Crown; the Cabinet is "a unity before the Sovereign, and the Sovereign is a unity before them." "To descend into the cockpit" is to lose independence and impartiality, and that will encourage different Ministers to angle for the Sovereign's support. Thus Cabinet solidarity and decorum are destroyed. Mr. Asquith puts the doctrine in an admirable way: "It is not the function of a constitutional Sovereign to act as arbiter or mediator between rival parties and policies; still less to take advice from the leaders on both sides, with a view to forming a conclusion of his own..... The growth and development of our representative system, and the clear establishment at the core of our Constitution of the doctrine of ministerial responsibility, have since placed the position of the Sovereign beyond the region of doubt or controversy."

The Crown's prerogative in England is declining through force of circumstances. The authority for dissolution of Parliament practically rests with the Cabinet. The King acts on the advice of the Cabinet in the matter. It is said that in deciding upon the dissolution of 1935

Mr. Baldwin, the Prime Minister, claimed for himself the full power to determine the issue. The modern tendencies in Great Britain are to make the King the ceremonial head of the State, divorced from essential contact with the conduct of its business. With the abdication of Edward VIII, the prestige of monarchy suffered and the position of the Prime Minister stood firmly established. The Regency Act 1937 crippled the discretionary powers of the King in the matter of determining the line of succession. The denial of the title of Royal Highness to the wife of the Duke of Windsor was unfair to the King. It is interesting to note that the *modus operandi* of the Munich agreement 1938 "clearly deprived the King of any opportunity of discussion, as opposed to mere homologation of a policy in whose formation he had taken no part. It is significant that the accord, which Mr. Chamberlain asked the Fuehrer to sign on September 30, was one between himself and the German dictator, the Royal name being entirely ignored."

If the Act of 1935 has any pretension to lay down responsible government it is the sacred task of the Governor to support "frankly, honourably, and with all his might, the Ministry of the time, whatever it may be, so long as it commands a majority, and governs with integrity for the welfare of the country." It frees the Governor from all responsibility for the acts of the executive and legislature, and it gives full play to the constitutional maxim that the King can do no wrong. It is his duty to see that "the Constitution functions in a normal manner", and it is no evidence of normality if the Governor feels called upon to act in his discretion or in his individual judgment in disregard of ministerial advice, although the Constitution Act gives formal sanction to all kinds of discretionary action of the Governor.

The partnership of the Governor and his Ministers under the Act of 1935 was explained very lucidly by Sir John Anderson in his address before the joint sitting of the Bengal legislature in July 1937. Before the Reforms

of 1935, the Governor had to accept direct responsibility for every measure, but under the new reforms Ministers would be solely responsible to the representatives of the people for every legislative measure that might be submitted by Government for enactment in either of the Chambers, and the special responsibilities under Section 52 in no degree oust or undermine the primary responsibility that rests on Ministers. To quote his words, "under the new Act the Governor as representative of the Sovereign becomes for the first time himself a part of the legislature. There is, in fact, a new legislative partnership established, and it is in this capacity and not in his capacity as the titular head of the Government that the Governor is entrusted with certain of his discretionary powers." When the Governor addresses the legislature, he does so by virtue of his statutory right; he does not do so on the responsibility of his Ministers. The terms of the Governor's address are not, like the King's speech in the British Parliament, thrown open to a general debate, nor does it serve as a vehicle for a general declaration by the Ministry of the legislative and general programme for the session.

The Prime Minister's power in office is dependent on his personality, on his personal prestige, and on his party support. Being the leader of a party which supports the Government, he will be consulted on the major problems of the country by other Ministers. There is a tradition in the parliamentary life of England that a Minister carries on for the public good, and it implies that a hint is enough to produce a resignation. The tradition reduces the possibilities of a conflict between the Prime Minister and a colleague. Such a tradition, which is built up by subordinating the attractions of office, is the product of long parliamentary training, and can work smoothly in a homogeneous Cabinet. In a coalition Government which is based on compromise, the rigid adherence to political convictions, even at the risk of losing the prospects of office, is not the approach of a realist. But in ordinary

circumstances, when a one-party Government is formed, to forego the prospects of office because of opinions keeps the level of parliamentary life high.

Mr. Baldwin's tenure of office in England was an epoch of deliberate aggrandisement of the executive at the expense of the legislature. His action accentuated the primacy of the Prime Minister. Before his retirement he made a public announcement that his successor would be Mr. N. Chamberlain and that such advice to the Crown would be acted upon. It is true that the Prime Minister occupies a special position as the leader of the Cabinet, and his resignation terminates the life of a Ministry. But the exaltation of the office of Prime Minister depends upon the personality of the Premier. Here in India, the office of Chief Minister in the Congress provinces did not provide opportunities of establishing its primacy in the Cabinet as the Ministry was controlled and supervised by an extraneous organisation, known as the Congress Parliamentary Sub-Committee. The party in the legislature which sustained the Ministry was subordinated to the ukase of the Congress Party outside; the Ministry although responsible to the legislature according to parliamentary convention had to remain really responsible to the Congress Working Committee whose orders were a law to them. In the non-Congress provinces, there were coalition Governments, and the Chief Minister could not lead the Cabinet and its supporters on the strength of leadership. A coalition Cabinet is not helpful for the exaltation of the office of Prime Minister.

The joint responsibility of Ministers demands that a Minister who is not prepared to defend a Cabinet decision must resign and that a Minister who does not resign is responsible. When the decision is made, all Ministers "must tell the same story." On incidentals there may be a compromise, but on fundamentals there is to be a rigid adhesion to the decision. The strength of Government is undoubtedly impaired by differences amongst Cabinet

members. The Cabinet may leave certain matters as "an open question," but that is only to be resorted to to prevent the breakdown of a Ministry. Ordinarily a Minister should avoid expressing personal opinions; he should not announce a new policy without Cabinet consent. The Prime Minister undoubtedly holds a privileged position, but he must be careful to get his colleagues' support in advance on any measure, as his resignation involves the fall of the Ministry.

The joint responsibility must not be understood to mean that for every personal mistake or error of judgment of a Minister the whole Ministry will suffer. In a modern Government, there is a substantial delegation of power to the Minister of a department; he has substantial discretion. For the errors of his department the Minister must accept personal responsibility. In that case, he will resign; Parliament can censure him. The Minister is responsible for every act of the Civil Service of his department. In India, the scope of ministerial responsibility for the errors of his department is limited. The Secretary as the head of the department is responsible for its smooth working. The Secretary belongs to the Indian Civil Service which owes official allegiance to the Secretary of State for India. The Secretary has access to the Governor to keep him informed of the work of his department. In cases of extreme urgency, the Secretary may anticipate the Minister's sanction and issue orders at his discretion. The Secretary of a department has direct responsibility for ascertaining what matters are to be referred to the Governor or to the Public Service Commission. The Secretary of a department shall take action if it is necessary to do so in terms of the assurances and undertakings given by the Governor in his replies to the addresses presented.

The incorruptibility of Ministers is very essential in a democratic constitution. That is why the acceptance of presents, the holding of directorships in a commercial undertaking and the retaining of any employment coming into conflict with the King's service which has the para-

mount claim on them are viewed with disfavour. Mr. Asquith laid down that Ministers ought not to enter into any transaction whereby their private pecuniary interest might come into conflict with their public duty and that they should not use any official information for their own private profit or their friends'. They should avoid speculative investments in securities. These are much more than "rules of prudence"; they are "rules of obligation." Mr. J. H. Thomas had to resign both office and membership of the British Parliament because he revealed facts about the budget in 1936. The report of the Bribery Commission appointed by the Governor of Ceylon to enquire into the alleged receipt of gratification by the members of the Council in respect of their work as members was published in May 1943, and eight members including three nominated European members were found guilty. The nominated members had to resign. In India the vague charges against legislators and Ministers were there, but there was no public enquiry into their conduct. It is discreet that Ministers should not write articles for publication in any way connected with "matters of public policy". Mr. Baldwin announced in the House of Commons in 1927 that the rules which they had adopted would preclude the practice by Ministers of "journalism in any form" but such restriction would not extend to authorship or to writings of a literary, historical, scientific, philosophical or romantic character. In India, conventions on these lines have not yet crystallized, although the conventions of British Parliamentary life have their influence in shaping the course of activities here.

The Act of 1935 implants the British political system in India; it seeks to introduce parliamentary democracy in the provinces. Parliamentary democracy in political parlance means that the Executive, constituted of elected members, is to be responsible to, and dependent on, the majority in the legislature. To make parliamentary democracy a success, there must be an agreement on funda-

mentals between the parliamentary majority of the day supporting the Executive and the Opposition which is in a minority for the time being. The Opposition must have the ambition to form the Ministry by future electoral gains or the strengthening of its party. This willingness to shoulder the burdens must be patent in both majority and minority parties. The majority party should not ruthlessly suppress the minority; nor should the minority party be intolerant of the decisions of the majority party; there must reign a spirit of trust and compromise. It is wholly alien to the spirit of the democratic constitution that the majority edicts in total disregard of the wishes of the Opposition should be the same thing as laws. The restraint of the majority party makes the minority Opposition a cheerful partner in the democratic parliamentary life of a nation. It is true that the working of provincial autonomy in the British Indian provinces did not guarantee a safe future for parliamentary democracy in our country. The Congress wanted to look upon the provincial Cabinet and legislature as a forum to strengthen its struggle for supremacy and political independence; it showed no spirit of compromise in accommodating other parties, and recognised only two parties in the country, viz., the Congress and the British Government. The Congress Cabinet showed adherence and obedience to the commands of the Congress Working Committee, a practice unknown to the laws of the country. The Moslem League did not disguise its dislike for democratic institutions, and in the Moslem League Coalition Cabinets the wishes of the Opposition on communal issues were disregarded. The Fascist tendencies of the political parties, especially of the Congress Party which tasted the powers of office, were pronounced.

Limitations on Responsible Government

Under the Act of 1935 the function of the Council of Ministers is to "aid and advise" the Governor. The

Instrument of Instructions to the Governor requires the Governor to be guided by the advice of his Ministers. It is true that legally the Governor can discharge his functions in exercise of his discretion or individual judgment even without consulting or accepting the advice of his Ministers.¹ But the object of the Act being encouragement of responsible government in the provinces, the legal disabilities should be subordinated to constitutional conventions. The expressions "aid" and "advise" occur in the Constitution of the Irish Free State Act 1922 (Section 51) and in the British North America Act 1867 (Section 11); the expression "advise" finds place in the Australian Constitution Act 1900 (Section 62) and in the South Africa Act 1909 (Section 12). The growth of ministerial responsibility in the Dominions and Great Britain was facilitated by constitutional conventions. The responsibility of Ministers to the legislature is also the product of constitutional understanding, although it is stereotyped in law in the Irish Free State. The function "to advise the Governor" means the right of Ministers to initiate proposals. The legal duty cast upon the Governor to consult his Minister is found in Section 59 (5). The Governor may therein act in his discretion, but the consultation is statutory, and it refers to the conduct of business of the provincial Government.

Section 50 (3) gives the final authority to the Governor whose decision is final and cannot be questioned in a court of law on the ground that he ought not to have done this and that in his discretion or in his individual judgment. But the principle of responsible government demands that the Governor should always consult his Ministers in all matters, whether falling within the sphere of special responsibilities or not. It is not the individual Minister but the Ministry as a whole that should be consulted. And if the Governor fails to follow the advice of his Cabinet, that

¹ *S. S. Batliwala v. Emperor* in the Madras High Court, 14th March 1938.

is undoubtedly an unconstitutional act; and if the Governor flouts the Cabinet on any major question, it is for the Ministry to resign, the only constitutional remedy open to them. The expressions "in his discretion" and "in his individual judgment" are peculiar to the Constitution Act of 1935. The words "individual judgment" are used in respect of powers within the area in which normally in ordinary times the Governor would be acting on the advice of his Ministers; the words "in his discretion" are used in respect of powers and functions of the Governor outside that area. The Act draws a sharp distinction between the respective responsibilities of the Ministers and of the Governor acting in his discretion or in his individual judgment.

It is to be mentioned, in this connection, that ministerial responsibility is seriously affected by Section 52 which enumerates the Governor's special responsibilities. The evolution of responsible government calls for the disuse of these "special responsibilities" of the Governor. It depends much on the collective and cohesive strength of the Ministry in the matter of vindication of ministerial responsibility to the prejudice of the statutory overriding powers of the Governor. If the Ministers act at the whip of the Governor, simply because the Governor has "discretionary authority" and "special responsibilities", they hurt the cause of responsible government. In August 1942 with the arrest of Congress leaders and the inauguration of a policy of repression by the Government of India following the decision of all-India Congress Committee to launch mass civil disobedience if the Congress demand for a National Government was not conceded, "the Progressive Coalition" Ministers in Bengal found themselves in a quandary, as they were averse to resigning their offices. The *Amrita Bazar Patrika* came out with an editorial on the 19th of August in support of the Ministry on the following grounds: "In every matter the Ministers cannot have their own way. The Governor's "discretionary" powers cover a wide field. His "special responsibilities"

constitute a brake on ministerial enterprise. These facts are known to the public. They were known to them when the provincial legislature put these Ministers in power seven or eight months ago by routing the Muslim League Party." This is a puerile contention, put forward in all seriousness by a nationalist daily. It devolves on the Ministers to reduce the discretionary powers of the Governor in practice and not to accept them in justification of their impotence in answering public expectations. Section 59(4) authorises the Secretaries along with the Ministers to keep the Governor informed of the business of the provincial Government. To quote Mr. Attlee, "the Secretaries are turned, as it were, into the watch-dogs of the Ministers." The channel of information to the Governor should be the Minister concerned; in exceptional cases the Governor may call for the Secretary in the presence of the Minister for further clarification. Section 56 provides for the amendment of police rules by the Governor in his individual judgment. Section 57 directs that if a Governor considers that there is a threat to peace and tranquillity, he can take upon himself the responsibility of dealing with the situation and suspend the transfer of law and order to the control of Ministers. This is different from Section 93 whereunder the whole machinery of provincial Government can be brought to an end. Section 58 provides that the sources of information in respect of crimes of violence tending to the overthrow of the Government established by law should not be disclosed without the direction of the Governor. Sir Samuel Hoare pointed out that under British practice the names of informants or agents in a secret service are not disclosed to the Minister immediately concerned and that the Indian Constitution had merely codified British practice. It is not to be denied that the British Minister concerned does not generally ask for the sources of secret information, but his powers are ample, and no convention would prevent him from exercising that power. But Section 58 of the Indian Act takes away the sources of secret

information from the arena of Indian Ministers in the provinces, although the departments of law and order are transferred. This provision has, however, worked smoothly till now and has not given rise to any serious conflict between the Minister in charge of the Home Department and the Intelligence Branch of the Police. In Bengal, over three thousand political prisoners were released by Government soon after the introduction of provincial autonomy and a large number of arrests have also been made since 1939 under the Defence of India Rules without giving rise to any difficulty. The Minister in charge of the department concerned did not complain about lack of information from the I.B. of the C.I.D.

Under Section 80, the Governor is empowered in his discretion to authorise such expenditure from the revenues of the provinces as he deems necessary to discharge any of his special responsibilities. Section 89 empowers the Governor to promulgate ordinances for the discharge of his functions; Section 90 authorises the Governor to enact Acts to deal with every contingency. Under Section 108 (2), previous consent of the Governor in his discretion to any Bill or amendment in the provincial legislature affecting the Governor's Act or Ordinance or any Act relating to the police force is to be obtained. There are statutory limitations in respect of recruitment, regulation and control of the services. All this does not encourage ministerial responsibility in the conduct of the provincial Government. The Instrument of Instructions which breathes a spirit of compromise to further ministerial responsibility is dependent on a gentleman's understanding; it cannot be enforced in a court of law. Responsible government by parliamentary institutions flourishes better on understandings than on statutory laws. It was only through understandings that responsible government was established in the Dominions, although the Irish Free State Constitution Act codified some of the conventions of responsible government such as ministerial responsibility to the lower

House, selection of the President of the Council (that is, the Prime Minister) and his colleagues, dissolution of the Dail.

The "safeguards", as they are called in political parlance in India, run through every sphere of ministerial responsibility. It is one thing to "reserve" certain subjects from ministerial control, and in that event the sphere of ministerial responsibility may be limited, but it is expected to be full and complete in the transferred subjects. Thus in the division of the reserved and the transferred subjects, ministerial responsibility, however partial, is absolute in the subjects transferred. The present Constitution Act of India does not specifically reserve independent subjects when it lays down that the Governor's special responsibilities are to operate in the prevention of menace to the peace or tranquillity of the province or in the safeguarding of the legitimate interests of minorities. Should the Governor desire, there can be interference with ministerial responsibility at every important stage on the pleas of peace and tranquillity and legitimate interests of minorities. It has to be realised that the principle of responsible government is incompatible with executive safeguards. If responsible government is to be real, executive safeguards must be left in cold storage. It does not involve derogation from the exercise of ministerial responsibility if the safeguards, should they be held imperative, are provided in such a way that their infringement may be remedied in a court of law. To place them within the discretionary power of the head of the Executive is objectionable in principle.

It has to be recognised that the Act, basically imperfect and defective as it is, can help responsible government on the constitutional understanding that "the special responsibilities of the Governor would be restricted in operation to matters of the gravest character." To say that the Governor would give all possible help and accommodation to the Ministers within the four corners of the Act is not an improvement, when we know that the Act is reactionary to a degree. The very first

act of the Governors in the provinces where the Congress Party was in a majority in the legislatures was unconstitutional when they obtained minority Ministries and allowed them to function for nearly five months. The Constitution never contemplates a minority Ministry. It brought into ridicule the clear assurance by Sir Samuel Hoare, Secretary of State for India, in the course of discussion on the Government of India Bill in the House of Commons that "the Governor's special responsibilities are not intended to obstruct a real transfer of responsible power. They are not intended to impede the day to day administration of any Minister. They are rather ultimate controls that we hope will never need to be exercised for the greater assurance of the world outside both in India and Great Britain."

In the appointment of the Governors of the provinces, the resumption of government by the Crown has been recognised. The Governor of the province is to be appointed by His Majesty under the Royal Sign Manual, and the executive authority of the province is exercised on behalf of His Majesty by the Governor. The Governor thus ceases to be an agent of the Central Government. The executive authority in India is, on the analogy of the Dominions, vested in the Crown. The Governors of the Australian States are appointed directly by the King; and the appointment of the Lieutenant-Governor of a Canadian province by the Governor-General is, in law, an act of the Crown, and the Lieutenant-Governor is as much a representative of the Crown for all purposes of provincial Government as the Governor-General is for all purposes of the Dominion Government.¹

From a case in the Calcutta High Court,² we gather

¹ *Liquidators of the Maritime Bank of Canada v. the Receiver-General of New Brunswick*, 1892, A.C. 437.

² *T. C. Goswami v. M. Azizul Huque* in the Calcutta High Court, April 29, 1937. The High Court held that under proviso (b) to Section 321 of the Government of India Act, the appointment made under the old Act had effect as if it were an appointment under the new Act.

that after the commencement of Part III of the Government of India Act 1935, Letters Patent were issued creating the office of the Governor of Bengal, but a Commission was not issued under the Royal Sign Manual appointing Sir John Anderson, Governor of Bengal under the old Act, to the office of Governor of Bengal under the new Act, and though an Instrument of Instructions under Section 53 of the new Act had been issued to him, he had not taken either of the oaths provided therein or caused any order appointing him to be read and published as directed in the Instructions. Prof. Keith held that it was not proper.

The executive authority of a province is exercised on behalf of His Majesty by the Governor directly or through officers subordinate to him, and all executive action is taken in the name of the Governor. In law, the Council of Ministers is not vested with executive functions. Ministers are undoubtedly members of the Government, and they are servants of the Crown, but they are not formally officers subordinate to the Governor,¹ and as such they are not persons authorised by law to administer executive government. This differentiation of the Council of Ministers from the executive Government of the province, if preserved, will not be helpful for responsible government. It is the governing principle of Cabinet government that the executive responsibility is shared by the Ministry, and it is in accordance with the constitutional practice that the Ministers, chosen by the Governor and removable by him at pleasure, are officers subordinate to the Governor, charged with administering executive functions. It is difficult to deny that members of the British Cabinet are not the persons authorised to administer executive government, although the Cabinet in Great Britain is an extra-legal body.²

¹ *Dhirendra Nath Sen and another v. Emperor* in the Calcutta High Court, July 19, 1938. Also *Emperor v. Hemendra Prosad Ghose and another* in the Calcutta High Court, June 7, 1939.

² Dr. Keith's article in the *Journal of Comparative Legislation*, November 1939.

Under the Act of 1935, the Governor is required to act in his discretion in respect of the following:

1. To preside at meetings of the Council of Ministers [Sec. 50 (2)].

2. To decide if in any matter he is to act in his discretion or in his individual judgment [Sec. 50 (3)].

3. To choose, summon and dismiss Ministers [Sec. 51 (1)].

4. To determine the salaries of the Ministers pending their determination by the provincial legislature [Sec. 51 (3)].

5. To prevent crimes of violence intended to overthrow the Government established by law [Sec. 57 (1)].

6. In the state of emergency to authorise an official to speak and take part in the proceedings of the legislature without the right to vote [Sec. 57 (2)].

7. To prevent the disclosure of sources of information regarding certain crimes of violence [Sec. 58].

8. To frame rules for authentication of orders and other instruments (after consultation with the Ministers) [Sec. 59 (2)].

9. To frame rules of business of the provincial Government (after consultation with the Ministers) [Sec. 59 (3) and (4)].

10. To summon and prorogue the legislature and dissolve the Legislative Assembly [Sec. 62 (2)].

11. To address and send messages to the legislature [Sec. 63].

12. To appoint acting President and Speaker in case of a simultaneous vacancy in the offices of President and Deputy President of the Legislative Council and Speaker and Deputy Speaker of the Legislative Assembly [Sec. 65 (3) and (5)].

13. To remove disqualifications for membership of the legislature arising from conviction and sentence of two years or more and failure to lodge return of election expenses [Sec. 69 (1) (e) and (f)].

14. To summon a joint session of the legislature before the normal lapse of time when a Bill affects finance or special responsibilities [Sec. 74 (2), proviso.].

15. To assent to the Bills passed in the legislature, or to withhold assent therefrom, or reserve them for the consideration of the Governor-General, or to return the Bills to the legislature with a message to reconsider [Sec. 75].

16. To decide if any proposed expenditure falls within a class of expenditure charged on the revenues of the province [Sec. 78 (1)].

17. To make rules of procedure for the legislature, after consultation with the Speaker or President, with regard to the "discretionary" or "individual judgment" matters, financial business, and discussion and question on any matter connected with any Indian State, and other subsidiary matters [Sec. 84].

18. To certify that the discussion of a Bill, clause or amendment is dangerous to peace and tranquillity and thereby stay proceedings [Sec. 86 (2)].

19. To promulgate ordinances for satisfactory discharge of his "discretionary" and "individual judgment" functions (ordinarily with the concurrence of the Governor-General in his discretion) [Sec. 89].

20. To enact Acts for the discharge of his functions with the concurrence of the Governor-General in his discretion [Sec. 90].

21. To administer and make regulations for excluded areas [Sec. 92].

22. To take over the government of the province by a Proclamation in the event of a breakdown of the constitutional machinery and to revoke such Proclamation with the concurrence of the Governor-General in his discretion [Sec. 93].

23. To give previous sanction to legislation which affects the Governor's Act or Ordinance or any Act relating to police force [Sec. 108 (2)].

24. To suspend the operation of the provisions of Sec. 111 (1) regarding rights of entry of British subjects domiciled in the United Kingdom [Sec. 111 (3)].

25. To give previous sanction to legislation regarding professional and technical qualifications [Sec. 119 (1)].

26. To discharge functions as agent to the Governor-General in relation to tribal areas, defence, external affairs or ecclesiastical affairs [Sec. 123].

27. To give previous sanction to Bills amending the order-in-council or rules under it by which the duties and powers of the provincial Audit-General are defined [Sec. 167 (2) (b) read with Sec. 166 (3)].

28. To concur in the proposal to sell or change the use of the official residence of the Governor [Sec. 175 (1)].

29. To give previous sanction to Bills endowing the High Court with original revenue jurisdiction [Sec. 226 (2)].

30. To decide when the Public Service Commission should be consulted as to appointments to the High Court Staff [Sec. 242 (1)].

31. To appoint the Public Service Commission and to frame regulations for the purpose [Sec. 265 (1), (2) & (3) and Sec. 266 (3)].

32. To give previous sanction to Bills providing for additional functions of the Public Service Commission [Sec. 267].

33. To consent to institution of civil or criminal proceedings against public servants for acts done in official capacity before commencement of Part III of the Act [Sec. 270].

34. To give previous sanction to Bills abolishing or restricting protection of public servants under Sec. 197 of the Code of Criminal Procedure 1889, and Sections 80 to 82 of the Code of Civil Procedure 1908 [Sec. 271 (1)].

35. To give previous sanction to Bills relating to land acquisition, etc. [Sec. 299 (3)].

36. To appoint the Governor's secretarial staff and to determine their remuneration, etc. [Sec. 305 (1) and (2)].

37. To express opinion for the Secretary of State on amendments recommended by a resolution of the provincial legislature in the Act or in an order-in-council to alter the size or composition of a legislative chamber, qualifications for membership, franchise, etc. [Sec. 308 (1)].

38. To make nominations to the Legislative Council. Fifth Schedule, Para 14 (d).

39. To curtail the term of office of certain members of the Legislative Council upon its first constitution. Fifth Schedule, Para 18.

In so far as the Governor is required to act in his discretion he is under the superintendence of the Governor-General in his discretion, who in such matters is again under the superintendence of the Secretary of State. But such superintendence may not conflict with the Governor's Instrument of Instructions. The validity of anything done by the Governor shall not be called in question on the ground that it was not done in accordance with such superintendence or on the ground that he ought or ought not to have acted in his discretion.

The Congress and Office Acceptance

The Indian National Congress did not approach the new Constitution in a spirit of co-operation. To quote Pandit Jawaharlal, "it has been forced upon us against our will. We dislike it thoroughly, and we propose to make its functioning as difficult as possible." He contends that there can be no proper solution of the problems of land, poverty and unemployment under British Imperialism. Such an argument appeals easily to discontented people; it is not pitched in a constructive key. The Congress was not unmindful of the follies of any such destructive appeal. Accordingly, the Congress Election Manifesto attempted a synthesis of the two conflicting ideologies. On the one hand, it was stated that the purpose of sending Congressmen to the legislatures under the Act of 1935 was not "to co-operate in any way with the Act but to combat it and seek to end it"; on the other hand, it was proclaimed that

the Congress representatives would "take all possible steps to end the various Regulations, Ordinances and Acts which oppress the Indian people and smother their will to freedom" and that they should "work for the establishment of civil liberty, for the release of political prisoners and detenus and repair the wrongs done to the peasantry and public institutions in the course of the national struggle." The Congress authorities knew perfectly well that the constructive part of the programme, outlined in the Election Manifesto, could not be carried out without acceptance of office; at the same time, they were aware that discontent in the country with alien rule could not be intensified to accelerate the pace of national struggle without some revolutionary cry. The Manifesto, therefore, postponed the decision on office acceptance and sought to show revolutionary fervour by stating that "whatever the decision it must be remembered that in any event the Congress stands for the rejection of the new Act and for non-co-operation with its working." In the very fact of postponement of the decision on office acceptance, one could see that the Congress was not opposed to utilising the new Constitution for furthering its own constructive programme; it remained a mystery to non-Congress people how the constructive part of the programme could be furthered by withholding co-operation from the working of the Act. The Congress Election Manifesto was indicative of its indecisive attitude towards the new reforms; it used hard words against the Act of 1935, promised remedy of wrongs to the electors and expressed determination to wreck the Constitution as a way of knitting together the radical elements in the Congress. To cover the inconsistent arguments with a political philosophy, it was emphasised that "real strength comes from organising and serving the masses." It is a tribute to the Congress organisation that with such a multi-faced Election Manifesto, the electors gave a wonderful response, and the Congress as a party came out triumphant in the elections.

After the elections, the Congress was confronted with the issue of office acceptance. It fought the elections to wreck the new Constitution. It found itself in a majority in six provinces. The strength of the Congress Party in the provincial Assemblies of the majority provinces was as follows: 159 out of 215 seats in Madras, 133 out of 228 in the United Provinces, 95 out of 152 seats in Bihar, 36 out of 60 seats in Orissa, 88 out of 175 seats in Bombay and 71 out of 112 seats in the Central Provinces. The Congress Party held key positions in the Assam, North-West Frontier and Sind Assemblies. It was only in Bengal and the Punjab that the Congress was in an ineffective minority. In Bengal, the Congress was forced to restrict its electioneering efforts to the General constituencies, and even in such constituencies the majority of scheduled caste representatives remained outside the Congress allegiance.

The Congress Working Committee issued a statement in February 1937 realising the high responsibility with which the nation had charged it by sending Congress representatives in large numbers to the legislatures, but it put off the issue of office acceptance. The all-India Congress Committee passed a resolution on March 18, 1937, authorising and permitting the acceptance of ministerial offices in the provinces where the Congress commanded a majority in the legislatures, provided "ministership shall not be accepted unless the leader of the Congress Party in the legislature is satisfied and is able to state publicly that so long as he and his Cabinet act within the constitution the Governor will not use his powers of interference or set aside the advice of Ministers." The Congress Committee also demanded on behalf of the people of India that the new Constitution should be withdrawn. Soon after the elections, about 800 Congress legislators and 200 members of the all-India Congress Committee met in an all-India convention, the first of its kind, in Delhi, March 19, under the presidency of the Congress President, Pandit Jawaharlal

Nehru. Members of the convention pledged themselves to the service of India and to work in the legislatures and outside for the independence of India and the ending of the exploitation and poverty of the people. The convention stood for a democratic State, to be created by the Indian people through a constituent assembly elected on the basis of adult suffrage.

On the issue of office acceptance the Congress was advised by Sir Stafford Cripps to reject office and by Lord Lothian to accept office. Sir Stafford Cripps at a public meeting in England wanted the Congress Party to oppose acceptance of office because "there is no greater danger to the Congress Party than getting entangled with the imperialist machinery of Government." Lord Lothian in a broadcast speech from London, dated March 29, 1937, advised acceptance of office and suggested that so long as Ministers were prepared to accept responsibility for their policy, it would be difficult for the Governors to refuse. That was, however, the correct constitutional course.

The provincial Governors with the full assent of the Governor-General and Secretary of State for India declined to give the required undertaking to the Congress Party.¹ According to the Governors, there was an insuperable legal objection *per se* in the demand of the Congress leaders for an assurance of the kind asked for, because of certain statutory directions. Lord Zetland, Secretary of State for India, held that the reserve powers of the Governor were an integral part of the Constitution, and they could not be abrogated except by Parliament.² According to him, the Governor could not pledge in advance not to use his special powers. Sir Tej Bahadur Sapru was of the opinion that on the legal side the Governor was right as he could not contract himself out of his statutory obligations and respon-

¹ Statement of Mr. R. A. Butler, Under-Secretary of State for India, in the House of Commons, 8th April 1937.

² Lord Zetland's statement in the House of Lords, April 8, 1937.

sibilities, but on the political side it was bad bargaining.¹ Mr. Bhulabhai Desai on behalf of the Congress pointed out that "notwithstanding the statutory right there is a standing convention and implicit understanding between the Crown and the Cabinet that the Crown's rights of interference shall never be exercised against the advice of the Ministry."² Mahatma Gandhi in recommending the Congress demand for assurance before the acceptance of office pleaded: "Have I not heard Sir Samuel Hoare and other Ministers saying in so many words that ordinarily Governors would not use their admittedly large powers of interference. I claim that the Congress formula has asked for nothing more. Once more the British Government have broken to the heart what they have promised to the car."³ He made an offer to the British Government; let them appoint an Arbitration Tribunal of three judges, one appointed by the Congress and another by the British Government with power to appoint a third, to decide whether it was competent for the Governors to give the required assurance.⁴ The case for asking for the assurance is explained in the resolution adopted by the Congress Working Committee at its Allahabad session on the 28th of April 1937 which states: "The past record of the British Government as well as its present attitude show that without specific assurances, as required by the Congress, popular Ministers will be unable to function properly and without irritating interference. The assurances do not contemplate an abrogation of the right of the Governor to dismiss the Ministry or dissolve the provincial Assembly when serious differences of opinion arise between the Governor and his Ministers. But this Committee has grave objection to the Ministers having to submit to interference by the Governor with the alternative of themselves having

¹ Sir Tej Bahadur Sapru's statement on April 2, 1937.

² Mr. Bhulabhai Desai's statement on April 2, 1937.

³ Mahatma Gandhi's statement on March 30, 1937.

⁴ Mahatma Gandhi's statement on April 10, 1937.

to resign their office instead of the Governors taking the responsibility of dismissing them." The Committee held that such assurances could be given strictly within the Constitution. Mahatma Gandhi's arbitration proposal was turned down by the British Government. In the refusal of the Governors to give the required assurance to the Congress Ministers and in the backing of the minority Ministers by the reserve powers of the Governor, Pandit Jawharlal, Congress President, saw "the culmination of the growth of the Fascist spirit in the British Government in India."¹

It was regrettable that the Governors were not authorised to give the assurance to the Congress Party. The Congress demand was not improper, as the Governor was asked not to use his special powers of interference only in regard to the constitutional activities of Ministers. Prof. Keith points out that the special powers are intended solely to meet cases of unconstitutional action and "constitutionally, Ministers are bound to preserve tranquillity, not to neglect or oppress minorities, not to ill-treat the civil service, not to corrupt the administration of justice, not to injure the interests of the States." It is the blunder of the India Office that the Governors have refused to promise not to interfere in constitutional activities. If the special powers are meant to be a bar to the adoption of a constitutional understanding that they would be restricted in operation to matters of the gravest character, they "reduce ministerial responsibility to a farce."

The Congress refusing to accept office in the provinces where it was in a majority, the Governors proceeded to the formation of minority Ministries. Minority Ministries, to quote Prof. Keith, are a negation in terms of responsible government, which means government by Ministers who command the support of the majority of the legislature. Minority Governments that have functioned in England were Governments on sufferance. But here in India the

¹ Pt. Jawharlal's statement on March 28, 1937.

minority Ministries were formed by the Governors and maintained by the special powers. It is true that the King's government must be carried on. If the majority party refuses, minority Government may be formed. But there is the constitutional obligation that Ministers must face the legislature with the minimum delay. If they fall, the offer to carry on the King's government must be repeated to the majority parties. On their persistent refusal, there were two constitutional courses open, *viz.*, dissolution of the legislature or suspension of the Constitution under Section 93 of the Act. "The forms of responsible government should not be misused to conceal its breakdown." The correct constitutional procedure in India was this: to form minority Governments on the Congress Party's refusal in the Congress majority provinces and to ask the minority Ministers to face the legislatures after a short period; on the fall of the minority Governments and on the persistent refusal of the majority parties to accept office, Section 93 could be applied to give time to the majority parties to revise their programme, if possible. If the deadlock persisted, the dissolution of the legislature was the only alternative. If the new legislatures were equally averse to forming Governments of the majority parties, the application of Section 93 could be set in motion till the Constitution Act was revised in the light of experience. It is true that Section 93 and dissolution were extreme alternatives, and accordingly, the Congress claim to accept office on the basis of specific assurance within the Constitution Act should have been accepted to further the cause of responsible government in India which was manifestly the objective of the Act.

On a true understanding of the constitutional obligations, safeguards may disappear without an amendment of the Act. The Governor's action in appointing a minority Ministry in a Congress province is not illegal as Section 53 bars legal remedy, but it was unconstitutional in terms of Section 93 and the Instrument of Instructions. The

Congress Working Committee at its Allahabad Session on the 28th of April 1937 recorded the opinion that the formation of the interim Ministries was unconstitutional, repugnant to the conception of autonomy and in total defiance of the overwhelming public opinion in each of the provinces. The Committee advised the Congress members of the legislatures to establish living touch with the electors in their constituencies and carry the message of the Congress and commend to them the constructive programme including the use of khaddar, local production of khaddar, creation of public opinion in favour of total prohibition, promotion of communal unity and eradication of untouchability. The Congress legislators had to court bleak obscurity in a parliamentary sense as the minority Ministers began to function without the aid of the Assembly. This was possible because of the exercise of the special powers of the Governors, and the Constitution Act was considerably discredited. It gave justification to the criticism of the Congress against the Act and to the observance of hartal on the 1st of April 1937, the day on which Part III of the Act relating to provincial autonomy was introduced. The Congress Parliamentary Sub-Committee which was appointed to supervise and co-ordinate the parliamentary activities of the Congress parties in the provincial legislatures gave directions to obtain signatures of as many members as possible including non-Congress members to the representation to be submitted to the Governor that the Council of Ministers does not enjoy their confidence and that the meeting of the Legislative Assembly be convened immediately to enable them to give formal expression of their want of confidence in the existing Ministry. In the Congress provinces, the Governors were confronted with such memorials. Such a constitutional demand could not be refused without exposing the reactionary nature of the Act. Mahatma Gandhi legitimately complained that "all talk of constitutional inability of the Governors to give the assurance baffles me and makes me

suspect the motives of British politicians who have the working of the Act within their powers."¹

On the 1st of April 1937 the Chief Ministers of the different provinces were as follows: The Hon'ble Mr. Fazlul Huq (Bengal), the Hon'ble Sir Sikander Hyat Khan (Punjab), the Hon'ble Sir D. B. Cooper (Bombay), the Hon'ble Nawab of Chattari (United Provinces), the Hon'ble Sir K. V. Reddy (Madras), the Hon'ble Mr. Mahamed Yunus (Bihar), the Hon'ble Maharaja of Parlakimedi (Orissa), the Hon'ble Sir Muhammad Saadulla (Assam), the Hon'ble Nawab Sir Sahibzada Abdul Quayam Khan (North-West Frontier), the Hon'ble Sir Ghulum Hussain Hidayatulla (Sind), the Hon'ble Mr. E. Raghavendra Rao (Central Provinces).

The constitutional deadlock in the Congress provinces had to be loosened. The Governor-General made a declaration on the 21st of June 1937 that "there is no foundation for any suggestion that a Governor is free, or is entitled, or would have the power, to interfere with the day-to-day administration of a province outside the limited range of the responsibilities confined to him." The needed assurance was given in the following language: "These special responsibilities are restricted in scope to the narrowest limits possible. Even so, limited as they are, a Governor will at all times be concerned to carry his Ministers with him; while in other spheres in the field of their ministerial responsibilities, it is mandatory on a Governor to be guided by the advice of his Ministers, even though for whatever reasons he may not himself be wholly satisfied that that advice is in the circumstances necessarily and decisively the right advice." He further pointed out that within the limited area of his special responsibilities the Governor was directly answerable to Parliament, but if the Governor was unable to accept the advice of his Ministers in the limited area of special responsibilities the responsibility for the Governor's decision was his own and the Ministers

¹ Gandhi's interview on the 22nd April 1937.

were entitled, if they so desired, to state that they took no responsibility for that particular decision.

The Governor-General's assurance to the Congress was belated. The growth of responsible government on the basis of healthy conventions cannot be promoted without any such understanding. The Joint Select Committee of Parliament on the Government of India Bill of 1919 suggested in their report that "if after hearing all the arguments, Ministers should decide not to adopt his (Governor's) advice, then the Governor should ordinarily allow Ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation." They knew that "it is not possible but that in India, as in all other countries, mistakes will be made by Ministers, acting with the approval of a majority of the Legislative Council, but there is no way of learning except through experience and by the realisation of responsibility." If the Government of India Act 1935 hinders the Ministers from learning through experience and by the realization of responsibility, the British Parliament could easily be charged with violating the spirit of the announcement of the 20th of August 1917.

The Congress Working Committee at its meeting on the 7th of July 1937 permitted Congressmen to accept office where they were invited, although it was of the opinion that the declarations fell short of the assurance demanded in terms of the all-India Congress Committee's resolution on the 18th of March 1937. The period between April and July of 1937 was not happy for the Congress Party in the legislatures, and the Congress Working Committee therefore held that "the situation created as a result of the circumstances and events that have since occurred warrants the belief that it will not be easy for the Governors to use their special powers," but it did not fail to point out that "office is to be accepted and utilised for the purpose of working in accordance with the lines laid down in the

Congress Election Manifesto and to further in every possible way the Congress policy of combating the new Act on the one hand and of prosecuting the constructive programme on the other." Ministries were forthwith formed in all six provinces where the Congress had a majority at the elections. The following were the Chief Ministers in the Congress provinces: the Hon'ble Mr. C. Rajagopalachari (Madras), the Hon'ble Pt. Govinda Ballav Pant (United Provinces), the Hon'ble Mr. Sreekrishna Sinha (Bihar), the Hon'ble Mr. B. Das (Orissa), the Hon'ble Dr. N. B. Khare (Central Provinces), the Hon'ble Mr. B. G. Kher (Bombay).

Political India may be tempted to see in office acceptance by the Congress a return to the path of constitutionalism. But the Congress has a phraseology of its own; it fights shy of being labelled as a constitutionalist party, and so the best results of constitutionalism cannot be expected from its method and manner of work in the legislatures. The Congress President, Pt. Jawaharlal Nehru, in a statement issued on the 10th of July 1937 said: "Acceptance of office may be a phase in our freedom's struggle, but to end the Constitution and have a constituent assembly is our main objective to-day as it was yesterday It is not to work the Constitution in a normal way that we go to Assemblies or accept office. It is to try to prevent Federation and prepare ground for a constituent assembly. It is further to strengthen the masses and wherever possible in the narrow sphere of the Constitution to give some relief to them." Such a statement is not to be taken seriously or literally. Subsequent events showed that the Congress accepted office to work the Constitution with a view to pressing forward measures for the amelioration of the condition of the people. The programme of wrecking the Constitution was on their lips, not in their hearts. The Congress and non-Congress Ministries became equally devoted to exploring the possibilities of provincial autonomy for the uplift of the economic condition of the country; they accepted the limitations

of office, although Congress Ministries now and then expressed revolutionary sentiments to silence the left-wingers in Congress circles. The Congress withdrew Ministries towards the end of 1939 to dissociate India from the War, not as a protest against the limitations of the Act. It is a hypothetical matter, but from the trends of Congress Ministries it can be stated that but for the war the provincial Assemblies would have peacefully lived their full term of five years. The War created a new situation for political India, and the Congress could not remain in office in the face of its political protestations to its constituencies. That was inevitable, but manifestly painful to Congress Ministries.

The Congress accepted office with added prestige; it was commonly believed that the assurance was extracted from the Governor-General by the strategic move of the Congress. The assurance was implicit in the rules of self-government; it was deplorable that the Governors refused to give the required assurance at the start. If the Ministries had been formed by the Congress without the assurance, they could also exercise the same amount of power and influence in the provincial administration, provided Governors were true to the spirit of the Act. It is only by practice that the art of government is acquired, and it was essential in the interests of India that self-government in the provinces, however limited under the Act of 1935, should draw forth the co-operation of all political parties.

The formation of Congress Governments contains lessons for political India. When the Congress decided to accept office, all other non-Congress parties including the Moslem League showed willingness to work with the Congress. The political situation was favourable for coalition Cabinets. The Instrument of Instructions to the Governor can be interpreted to favour the formation of a coalition Cabinet. The Congress, however, stood for a homogeneous Cabinet. Sardar Vallabhai Patel, Chairman of the all-India Congress Parliamentary Sub-Committee,

issued instructions to the leaders of Congress parties in the provinces where they had been called to form Ministries to consult Moulana Abul Kalam Azad, another member of the Sub-Committee, and to obtain his approval for the appointment of Moslem members in their Cabinets. A significant event occurred in the United Provinces. The Parliamentary Board of the United Provinces Moslem League offered its co-operation to the Congress Party in the United Provinces Assembly on the basis of the Congress programme passed at Wardha on the 8th of February 1937. The Congress resolution laid stress on the objectives of independence and constituent assembly and on the parliamentary programme. Chaudhuri Khaliq-u-Zaman and Nawab Ismail Khan carried on negotiations with their Congress friends. Maulana Abul Kalam Azad gave the following terms to the United Provinces Moslem League Parliamentary Board:

(1) The Moslem League group in the United Provinces legislature shall cease to function as a separate group; (2) the Moslem League members must join the Congress Party as full members and share their privileges and obligations; (3) the Moslem League Parliamentary Board in the United Provinces will be dissolved; (4) no candidates are to be set up by the Moslem Board in any bye-election and the candidates nominated by the Congress must be supported by them; (5) the Moslem League parliamentary members must abide by the rules of the Congress Party.

These terms were offered as a price for the inclusion of Moslem League members in the Congress Cabinet. The efforts for a settlement failed. The terms indicated the intolerant and unaccommodating attitude of the Congress. The Congress, in fact, wished the extermination of all rival parties and bent its efforts to prevent coalition Cabinets. No spirit of compromise was shown; there was no generous approach from the majority party. It showed an extremely narrow dictatorial attitude which intensified

the rivalry and opposition of the Moslem League and other non-Congress parties in the country. Under the rules of the Congress game, the chances of coalition Cabinets dwindled away, and only those who seceded from the non-Congress parties were taken in. Some Moslem Leaguers in the United Provinces joined the Congress alleging that the Moslem League was not a congregation of liberty-loving Moslems.

The Congress Ministry was thus a one-party Government, the Opposition having no chance of alternative Government in future. Such a situation is hurtful to the growth of parliamentary government. The Congress behaved as if it was the only party representing the will of the country, and those who were against the Congress programme were treated as traitors to the country's cause by the Congress press. The Congress President, Pandit Jawaharlal, maintained that there were only two parties in the country, Congress and Government.

Mr. Hafiz Muhammed Ibrahim joined the Congress Cabinet in the United Provinces as Minister for Communications, breaking away from the Moslem League. He signed the Congress pledge. He was challenged by the Moslem League to resign and seek re-election. Mr. Ibrahim accepted the challenge. He resigned and defeated the Moslem League candidate in the Bijnor Najibabad-Garhwal Moslem rural constituency bye-election on the 1st of November 1937, by 7,271 votes to 2,202. It was a significant constitutional event, and gave a set-back to the cause of the Moslem League in the United Provinces. It also increased the prestige of the Congress.

The formation of homogeneous Cabinets in the Congress provinces and the spurning by the Congress of the offer of co-operation of the Moslems in the matter of formation of coalition Ministries stiffened the attitude of the Moslem League and of Mr. Jinnah. Moreover, the Congress accepted some of the Moslem Leaguers who seceded from the party in the Ministries. On the 31st of

March 1937 the Congress President Jawaharlal Nehru announced that the all-India Congress Committee would start a separate department to organise Congress contacts with the Moslem masses of India. He suggested that the Provincial Congress Committee should appoint a special committee to take in hand this work. His election tours convinced him of the need of establishing living touch with the Moslem masses, as that was the most democratic method of obtaining sanction from the people for seizure of power. The Moslem League under the leadership of Mr. Jinnah began to view the Congress move with suspicion. It was the desire of the Moslem League that the fate of Moslems should be left to it and that no other organisation should be permitted to wean Moslems away from its control. The Congress move incensed Mr. Jinnah. The Moslem League was, under pressure of political events, forced to move in reactionary channels, and as the first step it changed its creed at the Lucknow session in October 1937 from "attainment of full responsible government for India by all peaceful and legitimate means with adequate and effective safeguards for the Mussalmans" to "establishment in India of full independence in the form of federation of free democratic States in which full safeguards for Mussalmans and other minorities will be secured." The League lodged its protest against the formation of Ministries by the Congress in violation of the Government of India Act 1935, and condemned Governors for failure to safeguard the interests of minorities. It put forward its basic demand that the Communal Award was not to be changed except by agreement and that in any future constitution the interests of Moslems should be safeguarded. After its Lucknow session, the Moslem League began to exhibit a frankly communal attitude, and it was a regrettable development in Indian politics. At the special session of the all-India Moslem League in Calcutta on the 17th of April 1938, Mr. Jinnah in course of his presidential address re-stated

the position of the Moslem League by emphasising that "we cannot surrender, submerge, or submit to the dictates or the ukases of the High Command of the Congress which is developing into a totalitarian and authoritative caucus functioning under the name of the Working Committee and aspiring to the position of a shadow Cabinet of a future republic."

The Congress Ministries were evidently not anxious for co-operation from the other parties in the legislatures unless they could get it on their own terms. But the Congress Working Committee at its meeting on the 16th of August 1937 permitted the minority Congress Party in a provincial Assembly to co-operate with the other groups for general or specific purposes in connection with the parliamentary work in the legislature without sacrificing the Congress principle or policy. The minority Congress Party was asked to strengthen the Congress opposition in the legislatures, but any co-operation with the other parties should not be interpreted as committing it in the matter of formation of a Ministry.

The Congress patiently waited for the Governor-General's assurance. But in the provinces where the Congress was in a minority the non-Congress parties accepted office without any assurance, though they were not insensible to the rules of responsible government. Sir Sikander Hyat Khan, the Punjab Chief Minister, declared in the Legislative Assembly on the 12th of April 1937 that if at any time he and his colleagues found that the Governor was deliberately flouting their advice, they would be prompt to resign and go over to the Opposition benches. Mr. Fazlul Huq, Bengal's Chief Minister, subscribed to this declaration in a speech on the 18th of April 1937.

The Congress Ministries began to function under the supervision of the all-India Parliamentary Sub-Committee constituted with Sardar Vallabhai Patel as Chairman and Dr. Rajendra Prasad and Maulana Abul Kalam Azad as

members. The provincial Congress Committees were given the right to send in suggestions or to make friendly criticism of the Congress Ministries, but there should be no embarrassment. The Congress did not take note of the democratic practices that "healthy, well-informed, balanced criticism is the ozone of public life" and that a most democratic Minister is likely to go wrong without ceaseless vigilance from the public. The Congress President, Pandit Jawaharlal, announced that it was not proper for a Congress organisation to condemn a Congress Ministry, as "we are all soldiers in the same cause, comrades in the same great enterprise." The Congress parties in the legislatures have had to keep touch with the provincial Congress Committees. The supervising authority of the all-India Congress Parliamentary Sub-Committee prejudicially affected the position of the Congress Chief Ministers whose leadership and influence in the Council of Ministers could not be effectively established. This was fatal to the dignity of the office of Chief Minister and detrimental to the smooth functioning of ministerial responsibility. Personal quarrels amongst the party in the legislature could be carried over the head of the Chief Minister to the Parliamentary Sub-Committee whose directions had to be obeyed under the rules of Congress discipline. The non-official guide of the Congress Ministries was Mahatma Gandhi himself who gave cordial support to the Congress Parliamentary Sub-Committee. The Congress Ministry constitutionally owed allegiance to the Congress Party in the legislature, but it had to obey the dictates of the Congress Working Committee and the Congress Parliamentary Sub-Committee, a strange position which does not foster collective responsibility of Ministers and parliamentary government. The Ministries become the mouthpiece of an extraneous organisation. To make the position more smooth for the Congress Parliamentary Sub-Committee, the all-India Congress Committee at its Bombay meeting in 1939 adopted a resolution depriving

the provincial Congress Committee of its right to exercise general supervision and control over the provincial Ministries, and the Committee banned public discussion of issues about which there was no agreement between the provincial Congress Committee and the provincial Ministry.

The Congress Working Committee at its Bombay session on the 3rd of January 1938 did not favour unnecessary interference with and destructive criticism of the activities of the Congress Ministries, and maintained that, subject to the main policy of the Congress Working Committee through the Congress Parliamentary Sub-Committee, Ministers should be given the freedom to implement the Congress programme. The Congress Working Committee at its Delhi session on the 30th of September 1938 made it clear that the Parliamentary Sub-Committee was required to be in close and constant touch with the working of the Congress Party in all the legislatures in the provinces, to advise them in all their activities, to take necessary action in a case of emergency. It is entitled to act *suo moto* and not only on references by the parliamentary parties in the provinces or provincial Congress Committees. The United Provinces Provincial Congress Tenancy Sub-Committee passed a resolution questioning the authority of the Parliamentary Sub-Committee to interfere in 'tenancy legislation. The Congress Working Committee considered the United Provinces resolution "particularly objectionable".

The Congress Working Committee gave directions at its meeting in August 1937 that the Congress Ministers' salaries should not exceed Rs. 500 per month, house allowance Rs. 100 per month and motor allowance Rs. 150 per month. Ministers who did not need house allowance should not draw it; the State might provide cars for the Ministers. The salaries and allowances of the parliamentary Secretaries were left to the discretion of Congress Ministries. The daily allowance should not exceed Rs. 2-8 per day. If there is a salary for ordinary members which must not

exceed Rs. 75 per month, the allowance should not exceed Rs. 2-8 per day for days of attendance.

The Congress Working Committee decided that Congress legislators in non-Congress provinces could not accept anything more than Congress members in the Congress provinces were getting. All excess above this should be handed over to the all-India Congress Committee to be used for special provincial purposes on the advice of the provincial Congress Committee and the Congress Party in the provincial legislatures. The Fund should not be used to carry out the routine duties of the Congress. The excess should be sent through the leaders of the provincial Congress Party in the legislatures. Pandit Jawaharlal complained in a statement dated March 16, 1938, that "there has been already great delay in conforming to these rules, although considerable sums have been realised by individual members." This was a symptom of the unwillingness of Congress members in non-Congress provinces to part with the excess.

The Congress Working Committee issued an Instrument of Instructions to the Congress Ministries. It wanted uniform policies on the release of political prisoners, removal of restrictive orders and bans, establishment of civil liberty, agrarian programme to give relief to the peasants, prison reforms, prohibition and village uplift schemes. Māhatma Gandhi who was the guiding spirit of the Congress policy chalked out the following programme for the Congress Ministries in "Harijan" (dated July 31, 1937): total prohibition in three years; making education self-supporting by introducing the teaching of handicrafts; fresh taxation of the rich; primary education to be equal to the present matriculation less English; the revolutionizing of college education by relating it to national necessities; jails to be turned into hand-spinning and hand-weaving institutions, the State to buy all the khadi produced at cost price; protest by the provincial Ministers against their

people being unjustly dealt with by the Centre as regards salt.

In the Congress Premiers' Conference in Bombay in May 1938 under the presidency of the Congress President, Mr. Subhas Chandra Bose, it was agreed that civil liberties could be curtailed where activities related to communal hatred or violence. There was an attempt to formulate a uniform policy in all the Congress provinces.

The first Congress Ministry without majority was formed in the North-West Frontier province in September 1937 by Dr. Khan Saheb, the leader of the Congress legislative party. The vote of no-confidence in the Sir Abdul Quayam Ministry was passed in the Assembly on September 3, 1937. The peculiar circumstances of the province were taken into consideration. The Congress accepted office on the assurance of a stable majority. It was a coalition Cabinet as the non-Congress Ministers, although they agreed to support the parliamentary programme of the Congress Party and to be subject to the control and discipline of the Congress Party, were not formally members of the Congress. In the Assembly of 50 members, only 19 members belonged to the Congress Party.

The no-confidence motion sponsored by the Congress Party in the Sind Assembly on the 18th of March 1938 was passed by 23 votes to 22. The defeat was due to differences within the Hidayatulla Ministry. Khan Bahadur Allah Bux then became Chief Minister with the implied support of the Congress Party. The attitude of the Congress Party in Sind was responsive co-operation, and it did not join the Ministry.

In Assam the Saadulla Ministry suffered defeats on the budget proposals in August 1937. The pay and the establishment charges of Divisional Commissioners were refused by the Opposition. It is an interesting constitutional point if a cut motion carried meant censure of or no-confidence in the Ministry. A defeat on an important part of

the budget is obviously too important to be passed over. The correct constitutional position in any party system of Government dictates that the Government party should have no place in the moving of cut motions¹ The Saadulla Ministry suffered defeats on different cut motions. On the eve of the no-confidence debate in the Assembly, the Saadulla Cabinet resigned in September 1938. A Congress coalition Cabinet was formed with Mr. Gopinath Bardoli as Chief Minister.

In April 1938, the Congress Working Committee adopted no specific resolution but permitted the Congress Party in the non-Congress provinces to enter into a coalition with the other progressive groups in the legislature and form coalition Ministries, provided the non-Congress Ministers were agreeable to carry out the political and economic programme chalked out by the Congress. It showed that the Congress stand for homogeneous Cabinets had been modified; it supported the principle of coalition Government only in the non-Congress provinces, although the Congress provinces were placed outside such a scheme. The stand was absolutely political; after tasting power in six provinces it found that power, however limited, was not to be spurned in the others. This was a search for power, and accordingly the Congress found no inconsistency in its demand for coalition Governments in non-Congress provinces.

Ministerial Responsibility

Congress rule was practically established in the nine provinces, Bengal and the Punjab remaining outside its sphere of influence. The six provinces, *viz.*, the United Provinces, Bombay, Madras, Central Provinces, Bihar and Orissa, where the Congress Party was in a majority in the legislature, saw homogeneous Cabinets. In Assam

¹ This was the view expressed by Khan Bahadur Sir Azizul Huque, Speaker, in the Bengal Legislative Assembly.

and North-West Frontier, Congress coalition Cabinets were formed; in Sind the Allah Bux Ministry was sustained with Congress support. It was only in Bengal and the Punjab that coalition Cabinets were formed with the Moslem League Party dominating, although neither Mr. Fazlul Huq, Chief Minister of Bengal, nor Sir Sikander Hyat Khan, Chief Minister of the Punjab, fought his election under the banner of the League. In both the Congress and non-Congress provinces the Ministries directed their efforts towards alleviating the economic condition of the people, especially of those classes who became the real masters through the right to vote. The franchise was widened, but it was far from adult suffrage. The majority of electors belonged to the lower middle classes, and the legislative programme of the provincial Ministries was practically framed to satisfy the demands of the classes competent to influence the composition of the legislatures. Accordingly the programme in each province ran practically on the same lines.

It is true that ideal Cabinet government cannot be furthered by a coalition Ministry where counsels are divided and where every decision is arrived at by tactful temporising after exhausting discussion. Party Governments are generally strong governments. A coalition substitutes "government by individuals for government by political principles", because compromise is the first and last principle on which a coalition can be maintained. A coalition Cabinet is normally the consequence of emergency conditions. But in India the party system is undeveloped. The Congress is not a party but a platform for galvanising discontented elements against British rule in India and for launching the struggle to free the country from alien rule. It is not strictly a political party, devoted to exhausting constitutional possibilities for the progress and welfare of the country; its political and economic programmes are more directed towards organising the masses for a future struggle than for alleviating the maladies from which the

nation is suffering. The Moslem League is frankly committed to establishing the ascendancy of Moslems and thinks in terms of Moslem interests and Moslem grievances without reference to the country as a whole. The Hindu Mahasabha is the antithesis of the Moslem League. The Liberal Federation was the only all-India political organisation which could be built up into a political party for the purpose of exploring all the possibilities afforded by the Constitution of self-government, but its organisational machinery was not effective to influence the electorate; moreover, the Congress by its virile organisational strength got the electorate in its own fold. In the absence of political parties pledged to work the Constitution on political and economic issues and in the presence of a foreign Power in our midst, which is not a normal condition favourable for the working of parliamentary institutions, the willing co-operation of all representative groups and interests in the national life of the country should be brought together in the service of the motherland. Accordingly, the case for coalition Cabinets in the present political temper should not be underrated on theoretical considerations, as the basis of party government is at present absent in India. The one-party Government is bound to run in the sands of authoritarianism if there is no chance of alternative Government by the Opposition.

The decision of the Congress Party in the matter of acceptance of office was not cheered by its radical elements which flourish most in the arena of opposition to British rule. The acceptance of office brought out the need for constructive efforts, and the Congress Party in its long history developed a habit of mind uncongenial for constitutionalism. The right wing of the Party which dominated and influenced the Congress to shoulder the burdens of provincial Government had to contend with the left groups in the pursuit of their constitutional activities. The Congress Ministries had accordingly to remain alert and to indulge now and then in wild and irresponsible statements

to humour and cajole their extremist groups. All this was helpful neither for combating the Constitution nor for working it.

The Congress Governments received co-operation from the Services and from the Governors, although they were faced with strikes and riots and kisan movement of the extreme type. Dr. N. B. Khare, the Congress Chief Minister of the Central Provinces, complained at a public meeting held in Poona on the 22nd of December 1937 that the old dyarchy was still in existence and that the Governor of the province, armed with powers of special responsibilities, individual judgment and discretion, sat as the agent of British Imperialism to hamper the progress of Congress Ministries. Internal friction, he said, was going on in every Congress province. If such a statement is to be taken seriously, it becomes clear that the spirit of the Act of 1935 remains unfulfilled; such a statement is complimentary neither to the Governor nor to the Congress Ministries. It is likely that Dr. Khare's statement does not indicate the real position. The Congress as an organisation did not complain on that score; the Governor-General and Governors showered praise on Congress Ministries.

After eighteen months of provincial autonomy under the Act of 1935, Lord Linlithgow gave us to understand that "the special responsibilities have admitted of being operated in the manner in which the Act intended them to be operated without any interference with the orderly development of the provincial scheme and without those frequent clashes between Ministers and Governors which were in so many quarters apprehended as likely." All this speaks of the ready spirit of co-operation of Governors and the Services with the Ministries.

In the fifty-first session of the Congress, 1938, the Congress gladly admitted that "a measure of co-operation was extended by the Governors to the Ministers." The Congress further recorded that it had been a sincere effort on its part to extract what was possible

from the Constitution Act for the public good and to strengthen the people in the pursuit of their goal of complete independence and the ending of the imperialist exploitation of the masses of India. Accordingly the Congress did not desire to precipitate any constitutional crisis.

It was reported in the Press in December 1937 that there was a hitch between the Governors and Congress Ministries in the United Provinces, Bihar and Madras over the release of political prisoners. The Congress Ministers tried to release the political prisoners recently convicted of violence. The Governors referred the matter to the Governor-General who justified interference on the following grounds: (i) it is dangerous to release terrorist convicts indiscriminately without regard to individual consideration; (ii) it will give impetus to fresh terrorist organisation in Bengal; (iii) the reaction of such a policy of indiscriminate release on the adjoining provinces will not be helpful. The Governor-General, however, did not fail to point out that "the Governors remain ready to agree to release, after examination, where no undue risk in their province or in other provinces is involved." The Governors in pursuance of instructions of the Governor-General under Section 126 (5) of the Constitution Act expressed inability to agree to the issue of orders passed by the respective Ministries directing the release of political prisoners. As a result, the Bihar and United Provinces Ministries resigned on the 15th February 1938. Mahatma Gandhi characterised the interference as unfortunate and uncalled for. The Congress Ministers were pledged under the Election Manifesto to secure the release of all kinds of political prisoners. The United Provinces Ministry in pursuance of such policy already had released the Kakori prisoners and other long-term prisoners whose term was soon to expire. That emboldened the Congress Ministries to carry the policy to its logical conclusions. In the opinion of the Indian National Congress, the release of prisoners is a

matter coming essentially within the purview of day to day administration which does not admit of protracted discussion with the Governors. The function of the Governor is to guide and advise the Ministers and not to interfere with the free exercise of their judgment in discharge of their day to day duty. The Congress held that the interference of the Governor-General with the deliberate action of the Chief Ministers (of U.P. and Bihar) was a violation of the assurance and a misapplication of Section 126 (5).¹

The ministerial crisis in U.P. and Bihar was, however, averted by the Governors accepting the policy of release after individual examination. In the joint statement issued by the Governors and the Chief Ministers of the provinces concerned, the desirability of establishing a healthy convention and working for the promotion of the good of the province was recognised and an assurance of not interfering with the functions of responsible Ministers was given.

The vindication of the policy of individual release in Congress provinces put the Bengal Ministry in an embarrassing position. The policy of gradual release was favoured by it. The Home Minister announced the following policy in the Bengal Legislative Assembly on the 9th of August 1937 with regard to the political prisoners:

- (i) to release all detenus who have been in home domicile for three months or more either unconditionally or subject to the reporting of their movement;
- (ii) to send from village domicile to home domicile those who have been in village domicile for 3 to 6 months;
- (iii) to reduce with all possible speed the number detained in camps and jails;
- (iv) to bring back to the province all persons detained outside Bengal under Regulation III

¹ Resolution of the fifty-first session of the National Congress, February 1938.

of 1818 or the Bengal Criminal Law Amendment Act;

- (v) to give suitable allowance for a limited period to released detenues whose family circumstances make it justifiable;
- (vi) especially to examine cases of all detenues whose health is an anxiety to their relatives and to take necessary steps for the purpose.

This did not satisfy critical public opinion. The Bengal Ministry went further and released eleven hundred detainees in November 1937. But the credit was not given to the Bengal Ministry, as the event resulted from the Gandhi-Anderson discussion. Mahatma Gandhi in a statement said that "the Ministers could hardly have carried out their wish but for the Governor's co-operation." Since then, the issue of political prisoners in Bengal was taken up by the Indian National Congress which also deprecated the continuance of the ban on about 110 Congress organisations in the district of Midnapore imposed by the Government of Bengal and criticised the explanation put forward by that Government that the Congress Committees were limbs of a terrorist organisation.¹ The Bengal Ministry followed a liberal policy but was given no credit by the nationalist press because of the active interest taken by Mahatma Gandhi in the matter. It was not diplomatic of the Bengal Cabinet to take the help of Mahatma Gandhi in the matter as the credit for the release went to him and the criticism that the convicted terrorist prisoners had not been released wholesale was levelled against the Ministry.

The Congress Government in the Central Provinces was a hot bed of corruption and personal bickerings. Maulana Abul Kalam Azad and Sardar Vallabhai Patel in a statement issued from Bombay, May 29, 1938, gave out

¹ Resolution adopted at the 51st session of the Indian National Congress, February 1938, Mr. Subhas Chandra Bose presiding.

with regard to the work of the Congress Ministry in the Central Provinces that (i) grave charges of bribery and corruption had been proved, (ii) there was administrative inefficiency, (iii) undeserving persons were appointed to professorships by the University and to some other positions by the Ministry, (iv) the Debt Conciliation Act was abused to give relief to moneyed men. These were serious charges, openly admitted by the members of the Congress Parliamentary Sub-Committee under whose supervision the Congress Ministry was functioning.

The Wardha Rape case in which Zuffar Hussain, a highly educated man, was convicted, had its repercussion on the Ministry. Mr. Yusoof Shareef, Minister of Justice, Central Provinces, released the convicted prisoner without consulting the Cabinet. Public indignation rose to a white heat. The Congress Working Committee considered the case and invited Sir Manmatha Nath Mukherjee of Bengal, sometime officiating Chief Justice of the Calcutta High Court, to consider if it was an error of judgment. The Minister tendered apology. Sir Manmatha held that Mr. Shareef's action had been a miscarriage of justice, although he was legally and juridically justified. The Congress Working Committee called for his resignation on moral grounds, and he had to resign.

The personal rivalries and jealousies in the Congress Cabinet of the Central Provinces were pronounced. A report was published in the Press on the 16th of July 1938 that following a breakdown in the talks amongst the Ministers about redistribution of portfolios necessitated by the resignation of Mr. Shareef, Mr. R. M. Deshmukh and Mr. L. B. Gole had tendered their resignations to the Chief Minister, Dr. N. B. Khare. They afterwards withdrew their resignations, but the trouble did not end. The Mahakosal group of Ministers wanted law and order for themselves. It was a sad comment on the Ministry, and such insistence negatives the convention of collective responsibility. That the Congress Ministers failed to follow

their leader in a homogeneous Cabinet by reason of personal rivalries showed national character in a very unfavourable light. The domestic quarrel was carried to such an extent that on the 20th of July 1938 the Chief Minister gave the Governor his own resignation and that of his Council, saying that Mr. R. S. Sukla, Pandit D. P. Misra and Mr. K. D. Mehta were unable to conform to the ordinary practice whereby the resignation of the Chief Minister was to involve the resignation of the whole Council of Ministers. The Governor terminated their tenure of office. The three Ministers explained that they refused to resign in the absence of instructions from the Congress Parliamentary Sub-Committee. It was a monstrous plea that they could not follow their elected leader in the legislature in the absence of any command from an extraneous organisation in the matter of an ordinary parliamentary convention. It was more surprising that the Congress Working Committee supported the three Ministers in their refusal to resign. Dr. N. B. Khare formed a new Cabinet without those three, *viz.*, Messrs Sukla, Misra and Mehta. He did this without the sanction of the Congress Parliamentary Sub-Committee. The Parliamentary Sub-Committee, supported by Mahatma Gandhi, took a grave view of this action and practically forced Dr. Khare to resign on the ground that he had committed an error of judgment in resigning and forming a new Cabinet. The Congress Working Committee at its Wardha meeting in July 1938 found Dr. Khare guilty of a grave error of judgment and indiscipline and the Governor of the province of showing ugly haste to weaken the Congress; it noted with satisfaction that the three Ministers had declined to resign without instructions from the Parliamentary Sub-Committee; it also found Dr. Khare unworthy to lead the Congress Assembly Party in the Central Provinces. The Congress Working Committee in its eagerness to support the Parliamentary Sub-Committee did not take into consideration the parliamentary practices that the leader was to

be elected by the Party and not to be foisted on any party and that all Ministers should resign with the Chief Minister on the principle of joint responsibility. It brushed aside the democratic lessons in its eagerness to take revenge on Dr. Khare. Pt. Sukla who was guilty of the breach of parliamentary convention was elected leader in his place through the insistence of the Congress High Command. The Congress President, Mr. Subhas Chandra Bose, justified the Congress decision by observing that "loyalty to the Congress must have precedence over loyalty to conventions or procedure." If this justification is taken seriously, Congress rule in the provinces cannot be regarded as helpful for the growth of parliamentary government. A new Ministry was formed on the 30th of July with Pt. Sukla as Chief Minister, and the personnel of the Cabinet was settled in consultation with the Congress Parliamentary Sub-Committee. The loss of premiership and leadership by Dr. Khare was the result of "devilish revenge, jealousy and malice".

Charges of nepotism and favouritism were made against the Congress Ministry in Orissa. Dr. Rajendra Prasad made an enquiry into the charges. The Committee of Enquiry appointed by the Government of Bihar under the chairmanship of Mr. Syed Abdul Aziz to report on the extent of corruption in the public services published its findings in 1939 and it was found that corruption prevailed in almost all the departments of Government and that there was abuse of power by Government servants. The Government of Bihar as a political move to capture the imagination of the Congress workers decided in 1939 to implement the Gandhi-Irwin agreement by reinstating, so far as practicable, persons who resigned or were dismissed or discharged for political reasons during the various civil disobedience movements and who applied for re-employment under Government and were still fit for employment. For this purpose, the duration of the civil disobedience movements was taken as from July 1920 to December 1924,

from March 1930 to March 1931, and from January 1932 to December 1932.

The appointment of Mr. J. R. Dain, Revenue Commissioner of Orissa, to act as Governor of Orissa when Sir John Hubback went on leave provoked a ministerial crisis in Orissa in 1938. The Congress Working Committee at its meeting in April 1938 held that the appointment of an officer of the Orissa service subordinate to the Ministers as Acting Governor in the absence of the permanent Governor was undesirable and a contravention of the usual convention as it was difficult for Ministers to act as Ministers under those who had been their subordinates. According to Mahatma Gandhi, it was incongruous and unbecoming and reduced autonomy to a farce. The Orissa Ministers lodged their protest. The Congress Working Committee invited the Governor-General or the Secretary of State for India, as the case may be, to revise the appointment, and it suggested the adoption of the recognised convention of appointing Chief Justices as Acting Governors. The ministerial crisis was averted by the cancelling of Sir John Hubback's leave.

The Brett circular touched on the constitutional position of the permanent Secretaries of the provincial Secretariate. A confidential circular, addressed to the Commissioners of Divisions, was issued by Mr. W. B. Brett, Chief Secretary, Government of Bihar, advising that orders from a Minister could be authentic only when they were duly signed by one of the permanent Secretaries. Such a circular was objected to. Mr. Srikrishna Sinha, Chief Minister, made an explanatory statement in the Bihar Legislative Assembly that the circular was issued in a private capacity and that Mr. Brett had expressed regret for this. The Bihar Government withdrew the circular and laid down that no Secretary should issue any letter regarding the constitutional position or regarding the interpretation of Government orders and that Secretaries must be regarded

as the communicating agents of orders passed by the Government.

In the Orissa Legislative Assembly the Madras Estates Land (Orissa Amendment) Bill was passed on the 5th February 1938. On the 3rd of May it was notified that the Governor had reserved the Bill for consideration of the Governor-General under Section 76. The Bill introduced khasmahal rates of rent in the permanently settled zemindaries of south Orissa. The issue was grave if the provincial legislature could alter the rate of rent in the permanently settled areas without payment of compensation. Mr. B. Das, Chief Minister of Orissa, viewed the reference to the Governor-General with resentment as he maintained that this was a clear encroachment on the field of ministerial responsibility. The Congress Ministry did not precipitate a crisis on this issue. The Governor-General, however, refused assent to the Bill later when the Congress was not in power.

The Bengal Tenancy Amendment Bill 1938 as passed was returned to the legislature by the Governor with a message that amendment of Section 52 suspending enhancement of rent in the event of augmentation of area of the holding did not meet with his approval. The legislature accepted the suggestion on the lines of the Governor's message. On constitutional theory it is an interference with the declared wishes of the legislature, but the Ministry and the Opposition did not resent the Governor's intervention. When the Moslem League coalition Cabinet fell, and another Cabinet with the support of the members of the non-official Congress Party in the Bengal legislature was formed, the Governor returned the Land Revenue Sales (Amendment) Bill 1941 objecting to a number of amendments. The Governor's intervention was quietly accepted, and there was no furore of agitation in the Press against this intervention.

In the last few years the Congress has been declaring on all conceivable occasions that its object is to achieve

independence and to have a Constitution framed for a free India through a constituent assembly elected by the people and without interference from foreign authority and that the whole Act of 1935 must be replaced. The Congress was more anxious to organise the masses for attaining independence than to give relief by constructive legislation and other welfare efforts, undertaken by and under the auspices of Government. The Congress Ministry in Bombay openly laid down that no legislative programme could be a substitute for the organised strength of the working classes. Pandit Jawaharlal proclaimed that the organised strength of the peasantry was more important than a change in the land laws. It is true that no lasting good can accrue till the masses are disciplined and drilled into an organisation to increase their strength and improve their character, but if the parliamentary programme is subordinated to, or brushed aside for, the organisational work with an eye to further national struggle, it does not help to get the best results from constitutional machinery. Provincial autonomy in that event cannot yield the desired results. In the Tripuri session of the Indian National Congress in March 1939 the Congress reiterated its national demand for independence and recorded that provincial autonomy would afford no such scope for development and that its capacity for good was being exhausted. It called upon the Congress organisations and provincial Governments to realise the Congress objectives, as India's problems could be solved only by an independent and democratic India. Accordingly, provincial autonomy, broadbased on ministerial responsibility, could not be worked in the Congress provinces with such a spirit of devotion and co-operation that full advantage was to be got from it.

In the light of the attitude of the Indian National Congress to the War the Congress Ministers found themselves unable to retain responsibility for the administration of the provinces. They could not give their active support to the prosecution of the war. Accordingly they tendered

their resignations towards the end of 1939. When the Party which commands an overwhelming majority in the legislatures feels bound to refuse any longer to be responsible for provincial administration, the Constitution inevitably breaks down. The National Congress criticised the Indian Constitution Act of 1935 as unacceptable. They fought the elections to the provincial legislatures under that Act with the manifest objective of wrecking the Constitution. They accepted office on assurance by the Governor-General that there would not be undue interference with the Minister's administration in the provinces. Their object in taking office in the provinces was to press forward measures for amelioration of the condition of the people and prevention of the operation of the federal system provided by the Act of 1935. None of these objects was in jeopardy. They abandoned office not in recognition of the defects found after administrative experience nor as a protest against any unwarranted interference by the Governors but in obedience to a mandate from the Congress because of the unsatisfactory pronouncement by the British Government with regard to war aims. This carries its own lessons. The Congress Party in the legislatures acted as a well-knit party, and the Congress Ministers were under the guidance of the Congress Executive in respect of larger policies. They were working the Constitution with an eye to outside politics, and as such the vessel of constitutionalism had no propelling force of its own.

The resignation of the Congress Ministers in all the Congress provinces left the Governors with no alternative but to suspend the Constitution. They tried to form, in their own way, alternative Ministries, but they naturally could not. Moreover, minority Ministries are extremely unconstitutional, and no such attempt was pursued this time. In exercise of the powers conferred by Section 93 of the Constitution Act of 1935, the Governors with the concurrence of the Governor-General declared by a

Proclamation that all their functions under the Act would be exercised by them in their discretion and that the Governors assumed all powers vested by or under the Act in the provincial legislatures, but not so as to affect any power exercisable by His Majesty with respect to Bills reserved for their consideration or the disallowance of Acts. The Governors could have dissolved the legislatures, but they did not do so as they could not expect any alteration of party strength in the composition of the legislatures from fresh elections.

In issuing a Proclamation under Section 93, the Governor concerned was careful to place on record that the personal relations between him and his Ministers had been of a most cordial character. So long as the Proclamation remained in force, the legislature of the province would not meet. To give effect to the object of the Proclamation, the following incidental or consequential provisions were made:¹

(1) The operation of the following provisions of the Act was suspended, namely, Sections 50 and 51, Section 59 so far as it relates to or requires consultation with Ministers, Sections 62 to 67 and 70 to 75, the proviso to sub-section 1 of Section 76, sub-sections 1 and 2 of Section 78 and so much of sub-section 3 thereof as relates to salaries and allowances of Ministers, Sections 79 to 82, so much of sub-section 1 of Section 83 as relates to the passing of a Resolution by the provincial Legislative Assembly, sub-section 2 of Section 83, Sections 84 to 90 and so much of Section 169 as relates to the laying of reports before the provincial legislature.

(2) The Governor, in his discretion, shall prepare such Bills as he deems necessary, and he may assent thereto in His Majesty's name or reserve it for the consideration of the Governor-General.

(3) Any expenditure from the revenues of the province shall be deemed to have been duly authorised if it is included in an annual estimate of expenditure or a

¹ Proclamation of the Governor of Madras under Section 93 of the Act of 1935.

supplementary estimate of expenditure published in the official gazette of the province.

(4) While this Proclamation is in force, it shall be unnecessary for an election to be held for the purpose of filling any casual vacancy in either chamber of the provincial legislature.

The Governor of the United Provinces in issuing the Proclamation under Section 93 regretted the departure from constitutional procedure but gave assurance to maintain the general continuity of the administration and to avoid, so far as may be, abrupt changes of policy.

Proclamations under Section 93 were issued in Madras, the United Provinces, Bombay, Bihar, the Central Provinces, Orissa, Assam and the North-West Frontier Province. Section 93 contemplates that the Proclamation is to remain in force for six months but it may be extended by resolutions of both Houses of Parliament up to a limit of three years in all. Under the India and Burma (Temporary and Miscellaneous Provisions) Act 1942 any such Proclamation shall continue in force, unless revoked, till the expiration of 12 months after the end of the war period.

The suspension of provincial autonomy in the Congress dominated provinces was not due to any failure on the part of the provincial Ministries to carry out the responsibilities entrusted to them, or to any conflict between them and the provincial Governors or the Central Government, but to purely extraneous causes. The Congress Ministry resigned, at the dictate of the Congress High Command, not in the pursuit of their policy of wrecking the Constitution and combating the federation under the Act of 1935, which was proclaimed in their Election Manifesto, but in vindication of their demands that India's consent should have been taken before she was committed to the War, that India's independence should be forthwith recognised and that Indians should devise their own constitution in a constituent assembly elected by adult suffrage. All these demands could perhaps wait,

as, in fact, they would have been kept in abeyance, if there was no declaration of war. The Congress Ministries resigned when they were utilising their powers and responsibilities vigorously for the pursuit of their ameliorative programme. There was no clamour except against Federation; there was no insistent national demand except the academic interest in the constituent assembly. The Congress, in fact, was settling down to constitutional work, forging ahead through constitutional conventions. After years of agitation the Congress Party tasted power and became drunk with it. There was a nervous shake-up here and there, but they were on the whole behaving orderly. The war brought moral issues before the Congress as a result of which they resigned; their resignations revived their claim for national independence; and they asked for a National Government in the Centre responsible to the legislature.

On the eve of the resignation of Congress Ministries the position of Congress and non-Congress groups in the Legislative Assemblies of the eight Congress provinces stood as follows:—

			<i>Congress</i>	<i>Non-Congress</i>	<i>Total</i>
United Provinces	..	..	147	81	228
Madras	..	..	162	53	215
Bombay	..	..	89	86	175
Bihar	..	..	98	54	152
Orissa	..	..	35	25	60
Central Provinces	..	..	71	41	112
N.W.F. Province	..	..	21		50
			(Coalitionist 29)		
Assam	..	..	32		108
			(Coalitionist 58)		

The Moslem League at its special session in Calcutta in April 1938 recorded the opinion that the Congress Governments had signally failed to protect the Moslem minority as communal riots in the U.P., Bihar, C.P., and Bombay had resulted in the loss of life and property of Moslems. The League also complimented the Huq Ministry in Bengal and the Saadulla Ministry in Assam for resisting "the machinations of the Congress to break

through these fronts." The front in Assam was, however, broken by the Congress in its efforts to form a Congress coalition Cabinet. In Bengal and the Punjab, the Moslem League had its sphere of influence, although originally Mr. Fazlul Huq in Bengal was elected on the Krishak-Proja Party ticket and Sir Sikander Hyat Khan in the Punjab on the Unionist Party ticket. In Assam Sir Muhammad Saadulla joined the Moslem League after his Cabinet had been formed. After the death of Sir Sikander Hyat Khan in December 1942, the Chief Ministership went to Malik Khizar Hayat Khan in January 1943, and since then the Moslem League's influence on the Punjab Ministry became more pronounced.

Mr. Jinnah in his presidential address at the Sind Moslem League Conference at Karachi in October 1938 brought serious charges against Congress rule in the provinces. He complained: "I know that Governors and the Governor-General have failed the minorities and especially the Mussalmans. But, on the other hand, we are told that there is a gentleman's agreement and a secret understanding between the British Government and the Congress in consequence of which assurances were given that such powers will not be exercised, and so it is obvious that the Congress Ministers are getting the longest rope with the result that the foolish policy of the Congress is responsible not only for intense bitterness between the two sister communities but among the various classes and interests. It has resulted in serious clashes and conflicts and ill will which are bound to recoil in the long run on the progress and welfare of India. And it seems that Congress is tumbling into the hands of those who are looking forward to the creation of a serious situation which will break India vertically and horizontally." In the 26th session of the all-India Moslem League at Patna in December 1938 the League declared open war against the Congress Governments, and it thought of civil disobedience in Bihar, the U.P. and the C.P. because of the alleged

curtailment of Moslem rights. The Committee of Enquiry appointed by the all-India Moslem League under the Raja of Pirpur to report on the oppression of Moslem minorities in the Congress provinces submitted its report in 1938, and it could not make out a case sufficiently strong to discredit the Congress Ministries, although Moslem charges and grievances were catalogued at an impressive length. The Congress Ministries are reported to have made enquiries into the charges levelled in the Pirpur report, and there was a strong denial by them of the charges.

The Moslem League under the inspiration of Mr. Jinnah continued to complain that provincial autonomy in the Congress provinces had resulted in the domination of Hindus over Moslems whose life, liberty and honour had been endangered and religious rights and culture curtailed. Dr. Rajendra Prasad, Congress President, informed Mr. Jinnah in October 1939 that the charges were unfounded and based on misapprehension and one-sided reports and that the Governments concerned had enquired into the charges and found them baseless. Dr. Prasad made a sporting offer that the Congress was prepared to get the charges enquired into by Sir Maurice Gwyer, Chief Justice of India, or by a person of similar status and judicial position. Mr. Jinnah did not accept the offer and replied that the whole case of Moslem grievances had been placed before the Viceroy for necessary consideration. Mr. Jinnah favoured a Royal Commission of Enquiry into the alleged oppression by the Congress Governments of Moslems and other minorities.

Mr. Jinnah pursued the matter. He called upon Moslems to observe the 22nd of December 1939 as a day of deliverance and thanksgiving "as a mark of relief that Congress Governments have at last ceased." His principal charges were that (a) the Congress Ministries had failed to safeguard the rights and interests of Moslems; (b) the Congress Ministries had flouted Moslem opinion, destroyed

Moslem culture, interfered with Moslem religion and social life and trampled down the economic and political rights of Moslems; (c) the Congress Governments had advanced the cause of Hindus in disregard of Moslem interests. Sardar Vallabhai Patel, Chairman of the Congress Parliamentary Sub-Committee, issued a statement from Bombay on the 10th of December 1939 replying to these allegations. It could be gathered from Sardar Patel's statement that the Congress Chief Ministers invited the Governors to intervene if their action in regard to the minorities was not correct and that Governors considered Mr. Jinnah's charges as "unwarranted". The Governors were also invited to contradict the charges, but they could not for reasons of constitutional propriety.

The Hindu Mahasabha pleaded that there was no justification for a Royal Commission to enquire into Moslem grievances, as proposed by Mr. Jinnah, but if such Commission were appointed at all, the terms of reference should include investigation into oppression of the Hindus¹ by the Moslem Ministries.

The non-Congress political parties in India were not satisfied with Congress rule in the provinces. Sir Chimanlal Setalvad, Sir Cowasji Jehangir, Sir N. V. Chandavarkar, Mr. V. D. Savarkar, Mr. N. C. Kelkar, Mr. Jamnadas Mehta, and Dr. B. R. Ambedkar issued a joint statement on the 2nd of October 1939 on Congress rule in the provinces and made the following criticism:

"The way in which they (Congress leaders) are exercising the limited democratic powers that have been available to them under the present constitution belies the hope that the present Congress leaders want to establish real democracy in India. The Congress Governments resent any opposition and wish like autocrats that no opposition should exist. By the experience that people have of Congress Governments in eight provinces for over

¹ The Calcutta session of the all-India Hindu Mahasabha, December 1939.

two years, it is felt that the idea of democracy in the minds of the Congress Governments means suppression of the liberty of the press, curtailment of the civil liberty of the people and ruthlessly silencing all opposition. Minority opinion in the provincial legislatures is ignored with callous indifference. The Congress and the Congress Governments believe in annihilating all parties and making the Congress the only party in the land as in the case in Fascist and Nazi regimes—a resolve which would be a death-blow to democracy. If the Congress really believed in democracy it would not slight other parties or insist upon their dissolution. Congress cannot bear rivals and cannot bear sharing credit.”

The Moslem League coalition Cabinet in Bengal could not also escape this criticism. The Coalition Party in Bengal was drunk with power and behaved on many occasions in an intolerant way. Many Government measures had to be modified in obedience to the wishes of the Coalition Party as against the considered view of the Ministry. In piloting the Bengal Tenancy Amendment Bill 1938 in the Bengal Legislative Council, a chapter on the realisation of rents which was inserted in the Select Committee with the consent of the Ministry had to be withdrawn out of respect for the wishes of the Coalition Party in the House. The clash of Ministry and Party was not infrequent. Mr. Nalini Ranjan Sarker in course of a statement in the Bengal Legislative Assembly on the 20th of December 1939 on his resignation made the following significant observation:

“The Cabinet has also gradually lost its leadership to the party. The Cabinet has lost its initiative. The party has become supreme, with the result that cool deliberation and mature judgment possible in a Council of Ministers have yielded place to the rashness and selfish predilections of a large party, which is predominantly communal in complexion and is still obsessed by the power which the ballot-box has given it.”

Political leaders belonging to the Liberal school of thought could not view with equanimity the suspension of provincial autonomy. It is true that Congress rule in the provinces did not meet with their approval, but they were glad to find the Congress using the technique of constitutionalism in furthering self-government. Accordingly, the Non-Party Conference under the leadership of Sir Tej Bahadur Sapru, an ex-President of the National Liberal Federation, suggested that if the majority party in the provincial legislature refused to form Governments non-official advisers responsible to the Crown should be associated with the provincial Governments which were being administered under Section 93 with the aid of official advisers. The suggestion was made to terminate the rule by official advisers and to associate non-official public opinion with the provincial Governments under the limitations of the Constitution Act. The Non-Party Conference, however, sincerely desired the return of the majority party to power in the provinces ruled under Section 93 in the interest of constitutionalism for which the Liberals as a party had been fighting since their dissociation from the Congress as a separate body. The Non-Party Conference served as a platform for non-Congress politicians who believed in reforms along constitutional lines.

After the resignation of Congress Ministries in eight provinces, a coalition Ministry was forced in Assam with Sir Muhammad Saadulla as Chief Minister. The Saadulla Ministry, in its first and second stages, could not live a normal life; it was always gasping for its existence. On the resignation of Mr. Rohini Kumar Chowdhury and the threat of a no-confidence motion, the Saadulla Ministry again resigned in December 1941. A new party in the Assam legislature, known as the Assam Nationalist Coalition Party, was formed under the leadership of Mr. Rohini Kumar Chowdhury. Mr. Chowdhury made a bid for the formation of a coalition Ministry and claimed that the Congress Party would remain in the legislature and

support a Ministry formed by him. In a statement in March 1942 he brought the charge against the Governor of Assam, Sir Robert Reid, that he had continued the rule of Assam under Section 93 by refusing the co-operation offered by himself in forming the Ministry. Mr. Chowdhury said: "To refuse my party to form the Ministry, although it commands a large majority in the House of legislature, and also the support of almost entire public outside, may be construed to mean only that the authorities in Assam wish to check the desire of the Congress Party to work the constitution in order to give effect to their policy and programme." The Governor was evidently not satisfied with Mr. Chowdhury's claim. The rule of Section 93 continued in Assam for a long time, and it was terminated in August 1942 when Sir Muhammad Saadulla formed another Ministry in which Mr. Chowdhury was not included.

In Orissa, a Congress province, some of the Congress members, sick of the negative and barren policy of suspension of parliamentary programme, revolted under the leadership of Pandit Godavari Misra and joined with the party of the Maharaja of Parlakimedi to form a coalition Cabinet. The Maharaja of Parlakimedi formed a Ministry in November 1941. It was an astounding constitutional event of great significance, and to non-Congress India it was most surprising and welcome. The Congress Party received a moral set-back. The Parlakimedi Ministry, however, commanded a feeble majority and it was formed primarily to give stimulus to war efforts in the province. The Congress Party maintained that the new Orissa Ministry was possible only because some of the Congress legislators of Orissa were in imprisonment. In the budget session in March 1942 when the first clause of the Bihar and Orissa State Aid to Industries (Orissa Amendment) Bill was being considered, the Opposition demanded a poll, and it was defeated by the casting vote of the Speaker, the voting showing 16 to 16. On the defeat the

Government decided not to proceed with the Bill. The Orissa Ministry is, however, not functioning with any confidence in its majority.

The Speaker of Orissa gave a significant ruling in the November session of the Legislative Assembly, 1942. He found that out of 60 members, only 15 attended. The Speaker observed:—"The fact remains that the House ceased to be representative in the sense in which it was intended by the Government of India Act". The Speaker advised the Ministry not to bring in any controversial Bill and gave ruling:—"If they otherwise persist the Chair will feel compelled to exercise its inherent powers of not putting questions or to adjourn the House sine die or to adjourn the House to a date fixed for financial business". It was similar to the ruling of Mr. V. J. Patel on the 8th March 1926 when the Swaraj Party withdrew from the Indian Legislative Assembly. In April 1929 Mr. Patel held up a highly controversial measure proposed by the Government of India, viz., the Public Safety Bill. The Orissa Speaker's ruling had its significance when it was revealed that out of 60 members of the Orissa Legislative Assembly, 29 members were in jail, 3 members have boycotted, 14 members sided with the Government and 13 members formed the Opposition. The return of ministerial rule facilitated by the imprisonment of Congress members is, in theory, an arrogant abuse of parliamentary government, but all the same it terminates the wooden rule by official advisers.

The Allah Bux Ministry in Sind survived a no-confidence motion in January 1939, but it resigned in March 1940. The Ministry formed by Mr. Bundehali Khan Talpur did not last long, and the Allah Bux Ministry again came in with the support of the Congress Party. In Sind the Congress Party did not accept office but supported the Allah Bux Ministry in view of "exceptional circumstances" in Sind. Even the Congress Party did not force Khan Bahadur Allah Bux to resign from the National Defence

Council which was boycotted by the Congress. The Chief Minister, Khan Bahadur Allah Bux, made a statement in the Sind Legislative Assembly on the 19th of December 1941, alleging the Governor's interference in the day to day administration in defiance of the undertaking given by the Governor-General to the Congress Party in June 1937. He observed: "If the attitude which the present Governor has taken, namely, that irrespective of the issue, whether major or minor, he must exercise his individual judgment then I think there will be a regular list to be prepared of all instances wherein interests would clash." The Chief Minister hinted that he would send instances of interference to the Secretary of State for his attention and did not favour resignation in a huff and hurry.

On the 10th of October 1942 the Governor of Sind dismissed the Chief Minister, Khan Bahadur Allah Bux, from office. The Khan Bahadur had renounced his titles as a protest against the policy of the Government of India with regard to the constitutional deadlock and the general repression. The Governor-General regretted "the precipitate and discourteous way in which you (Mr. Allah Bux) have released it (the letter) to the press" and informed Mr. Allah Bux that "the Governor will communicate to you regarding the effect on your position of the decision taken." The Governor communicated that Mr. Allah Bux did not possess his confidence and that he could not in consequence continue to hold office. The dismissal of Mr. Allah Bux followed from an action in which the Sind legislature was not constitutionally interested. The suspicion that the Governor-General had a hand in the matter discredited the working of provincial autonomy; the inference that political and imperial considerations weighed with the Governor of Sind was not wholesome for constitutional government. The Governor invited Sir Ghulam Hussain Hidayatulla to succeed Mr. Allah Bux. The dismissal of Mr. Allah Bux discredited the parliamentary convention that the action of the Crown in

appointing and dismissing Ministers is hardly more than formal and symbolic. To quote Dr. Finer, "the Crown appoints, but it does not choose; it dismisses, but it does not control; nor does it determine the occasion for dismissal". This is a misapplication of Section 51 of the Indian Constitution Act 1935. It is, however, to be observed that the Hidayatulla Ministry continued to function with the support of the Sind legislature, and this amounted to constitutional approbation of the Governor's action. The exit of Mr. Allah Bux helped the Moslem League to control the Sind Ministry.

The suspension of Cabinet rule in the majority of Indian provinces took a piquant turn when the India and Burma (Postponement of Elections) Bill was passed in Parliament in 1941. Elections to the provincial Assemblies were postponed for such period as might be considered necessary up to 12 months after the end of the war, the discretionary power of Governors to dissolve legislatures at any time remaining intact. The war and the presence of bitter communal feelings were given as grounds for the postponement of the elections. The extension of the life of the Central legislature year after year, together with the postponement of elections to the provincial Assemblies, had a very damaging effect on the parliamentary life of the country. Mr. Amery informed the Commons in piloting the said Bill that the matter had been fully discussed with the Governor-General and the Governments concerned, and the conclusion that they had come to was that it would not be desirable to hold elections at present. Mr. Silverman (Labour) in his criticism of the Bill in its third reading in the Commons observed: "This Bill was not an act of a democratic Legislative Assembly prolonging its own existence. This was an act of direct and personal rule; it was an act of autocracy; it was an act of dictatorship and an act of preventing the people from expressing their own views." The life of the provincial Legislative Assembly was extended, but its opinion was not sought.

It may be stated that the decision of the all-India Congress Committee on the 8th of August 1942 led to the arrest of Congress leaders and workers, and that a policy of repression was inaugurated by the Government of India to counter the movement of disobedience with the result that many Congress men including legislators belonging to the Congress Party were arrested and imprisoned. All this opened up the possibility of formation of Ministries by the minority groups in those provinces where Section 93 was proclaimed. In the North-West Frontier province the Proclamation under Section 93 was revoked in May 1943 with a view to constituting a Ministry with the assistance of Sardar Aurangzeb Khan. The Ministry that was formed had the Moslem League as its dominant partner. It is true that minority groups in a few provinces have been converted into majority groups through the detention of Congress legislators, and the formation of Ministries with those minority groups is not evidence of the normal functioning of the Constitution. But ministerial rule has its obvious advantages.

The Concept of Speakership

In the all-India Speakers' Conference held in New Delhi in January 1938 the following agreements were adopted:

(i) The British ideal of the Speaker's position of not having any party affiliation should be accepted; (ii) Speakers and Presidents should resign from the executive bodies of all recognised parties and not participate in the active politics of those parties; (iii) a Minister could not form quorum or exercise vote in a House of which he does not happen to be a member, and any such non-member Minister could not move a vote of censure against the presiding officer.

Mr. Purushottomdas Tandon, Speaker of the United Provinces, did not endorse the British concept of Speaker-

ship, and accordingly he ruled out of order an adjournment motion in the U.P. Assembly to discuss the participation of the Speaker of the House in party politics. Mr. Tandon said that he believed in the conventions of France and the United States of America and that if they cut the Speaker out of party politics, they would get a third rate man. Mr. Tandon had had the full support of the Congress Ministry, and Pandit Govinda Ballav Pant, Chief Minister, moved in the U.P. Assembly in March 1938: "This House is of opinion that any honourable Member who is elected as its Speaker should not be handicapped in his public activities in consequence of his election as Speaker, and that he should be free to take part in political affairs outside the House in his discretion." Pandit Jawaharlal Nehru agreed with Mr. Tandon's concept of Speakership and observed in a statement on the 1st of February 1938 that if the Speaker was impartial, it was immaterial if he was in politics. This may be taken as the Congress concept of Speakership.

Mr. Satyendra Chandra Mitra, though elected on the Congress ticket to the Bengal Legislative Council, was elected President, and resigned membership of the Congress Party. Mr. Mitra was called upon to pay the excess of the salary to the Special Fund in terms of the Congress resolution, but he did not. So the Congress Working Committee at its Bombay meeting in May 1938 took disciplinary action against him. Mr. B. K. Das, Speaker of the Assam Legislative Assembly, resigned from the Congress Party, although he was elected on the Congress ticket.

Parliamentary Secretaries

The Government of India Act 1935 does not lay down any specific rules governing the position and status of Parliamentary Secretaries. The Joint Select Committee on Constitutional Reform 1934 made it clear that the function of the Parliamentary Secretary was to help the

Ministers in their parliamentary sphere of work and that they had nothing to do with the administrative side of Government. The practice in the Dominions was also the same. It was, therefore, agreed at the Congress Premiers' Conference in Bombay in 1938 that the position and status of Parliamentary Secretaries should be confined to the sphere of parliamentary activities. In the Punjab Legislative Assembly, the Speaker gave a ruling in January 1938 that a Parliamentary Secretary could only reply to a question; he could not ask any question.

The Bengal Ministry

Since the publication of the Communal Award of His Majesty's Government and the incorporation therein of the Poona Pact increasing disproportionately the number of scheduled caste representatives in the provincial legislature, Bengal Hindus have shown uneasiness. There was a sense of frustration in the minds of the Hindus. On the eve of the introduction of provincial autonomy, a formula to settle the communal tension in Bengal was reached between the Maharajadhiraja Bahadur of Burdwan, President, Bengal Anti-Communal Award Committee, and Sir A. H. Ghuznavi. The terms of the pact¹ were as follows: (i) the Communal Award is to remain, subject to revision at the end of ten years or unless or until the Communal Award is modified by mutual agreement; (ii) the Cabinet is to contain an equal number of Hindu and Moslem Ministers; (iii) all the services under the provincial Government are to be recruited in equal numbers in the proportion of fifty-fifty from the Hindu and Moslem communities in Bengal. It was undoubtedly a political pact, aimed at helping the new provincial Government to work in a non-communal

¹ The Pact was on the lines of the proposal placed by Mr. B. C. Chatterjee in London in 1933 when he gave evidence before the Joint Select Committee on Indian Constitutional Reform. At that time, Sir N. N. Sircar in England and Mr. Hirendra Nath Datta in India opposed the formula.

atmosphere. From the correspondence published in the press it transpired that the proposal had had the support of Mr. Fazlul Huq, Khwaja Sir Nazimuddin, Mr. H. S. Suhrawardy, Khan Bahadur Sir Azizul Huque and other prominent Moslems having influence in the country. From the Hindu side it was powerfully supported, although the Bengal Provincial Congress Committee could not lend support to any such scheme. The Pact, however, was sneered at by the Congress President, Pandit Jawaharlal Nehru, in a speech at Agra, January 22, 1937. The principle of the Pact influenced the composition of the first Bengal Cabinet under the Reforms Act of 1935.

In Bengal, no single party commanded a majority in the Legislative Assembly. A coalition Cabinet was inevitable. The Governor saw the leaders of various political parties. Mr. Fazlul Huq's prestige and influence increased considerably when he scored a thundering personal victory by defeating Khwaja Sir Nazimuddin in the election for the reformed legislature. At the time of the election, Sir Nazimuddin was a Member of the Governor's Executive Council under the Act of 1919 and was an important member of the Moslem League which was expected to sweep the polls in the Mahammedan constituencies. But Mr. Fazlul Huq's Krishak-Proja Party returned a considerable number of Moslems to the Bengal Assembly, so many that he occupied a dominant position in the legislature. Mr. Fazlul Huq declared in reply to the address of felicitation at the Town Hall, Calcutta, on the 31st of January 1937 that "we will make Government in Bengal impossible if we are ignored." He also showed consummate foresight in agreeing to work with the other Moslems and in resisting affiliations to the Congress Party. A coalition between the Moslem League Party and the Krishak Proja Party was formed under his leadership and the majority of non-Congress Hindus including the scheduled castes joined the Coalition Party to form a coalition Government in Bengal.

Bengal thus started with a coalition Cabinet, and practically all parties in the legislature except the Congress Party extended support to it. It was a good combination to work the new Constitution in a team spirit. Excluding the Chief Minister, the Cabinet had an equal number of Hindus and Moslems. But from the very beginning the Bengal Cabinet met with a hostile reception in the Congress Press. It was yet too early to criticise the policy or action of the Ministry but the attack was directed against Ministers personally to discredit them. The attitude of the Congress Press was peculiar; it poured venom on the heads of Ministers for the acceptance of office whereas it supported the Congress demand for accepting office.

Statements by some of the Ministers on the assumption of office undermined the principle of Cabinet responsibility. On the 15th of April 1935 the Chief Minister, Mr. Fazlul Huq, made a public declaration: "If we cannot introduce primary education in Bengal, make it free and compulsory, we ourselves shall resign." All the members of the Cabinet were present at the Town Hall meeting, but the Chief Minister's statement was unauthorised. The Cabinet had not had the time to consider the issue. On June 6, 1937, the Chief Minister contrary to an earlier statement said that the introduction of free primary education was the most gigantic task the Cabinet was faced with and he doubted if primary education could be offered free without taxation. The Nawab Bahadur of Dacca, Minister in charge of agriculture and industries, in a speech at Bogra on May 14, 1937, announced that he was formulating a five-year scheme for the industrial and agricultural development of the province and rhetorically said: "If the present Government do not improve the condition of the poorer classes, I shall be the first to walk out of the Cabinet." Mr. N. R. Sarker, the Finance Minister, in an address at the Milanee dinner in Calcutta on the 16th of April 1937 stated that so far as he was concerned, it would be his constant

endeavour to further the constructive economic programme of the Congress to the best of his ability through the limited scope of the present Constitution. Mr. H. S. Suhrawardy publicly declared on the 18th of April 1937 that he would introduce comprehensive legislation for the welfare of workers and that "the Governor has given us a free hand, and if we fail to do anything good to the poor workers, the fault will be not of the Governor nor of the Constitution but of ourselves." These statements made by individual Ministers on the policy of Government in anticipation of Cabinet decisions did not help to develop the principle of collective responsibility of Ministers.

Provincial autonomy in Bengal started with initial handicaps. The Congress Party in the legislature was in an ineffective minority, and it had no chance of forming a Government even if it had been permitted to do so by the Congress High Command. Accordingly, the Congress Party in the Bengal legislature assumed the role of irresponsible Opposition; it knew that it had no future in that legislature. The Party launched a province-wide agitation against the Bengal Ministry for the release of political prisoners and detenus and the repeal of repressive laws. Many of the Congress organisations in Bengal were under a ban; there were hundreds under restraint as prisoners and detenus; there were repressive laws stifling civil liberty. The Ministry was formed in that hostile atmosphere. Many Congress workers were arrested on the 1st of April 1937 for the observance of hartal as a protest against the Act of 1935. Soon after the formation of the Bengal Cabinet there was the jute-mill workers' strike in the neighbourhood of Calcutta. The Chief Minister declared that there were "weighty reasons which have made it impossible for the Government generally to release detenus without causing disturbance of public peace and serious breach of law and order" and that "it is no part of the Government to decide the disputes as a judge and force its decisions on

any party." The Home Minister, Khwaja Sir Nazimuddin, and the Labour Minister, Mr. H. S. Suhrawardy, had to break new ground to solve the detenu problem and the jute-mill strike respectively. The Home Minister adopted the policy of gradual release of political prisoners as a result of prolonged discussion and negotiation with Mahatma Gandhi, and the Labour Minister announced that the new Government would not make the strike a domestic issue between employers and employees and that the Government would recognise the trade unions of workers as the mouthpiece of labour. The first act of the Bengal Legislative Assembly was a discussion on an adjournment motion regarding alleged interference by the executive authorities in connection with the jute-mill strike in the vicinity of Calcutta. The motion was talked out, but it served the purpose of the Opposition.

The Indian National Congress took up the cause of the political prisoners of Bengal. Pandit Jawaharlal Nehru issued a striking statement that "the strangling of Bengal with her detenus and internments and externments and bans on organisations and hosts of political prisoners oppresses the whole of India." The problem was a legacy from the past, and the cult of terrorism which once swept the province drew forth a repressive policy from previous Governments. The new Bengal Cabinet was not responsible for the situation, but it had to bear the criticism. Such an unfortunate situation in the province was exploited to the fullest extent in an agitation against the Ministry. New developments made the task more difficult for it. The hunger-strike in the Andamans started on the 24th July 1937. The strikers' demands related to the release of all detenus, state prisoners and convicted political prisoners, the repeal of repressive laws and withdrawal of all orders of internment, the repatriation of political prisoners in the Andamans to India, and the treating of political convicts as "B" Class prisoners. Most of the strikers were Bengalees. The Government of India

through the Chief Commissioner of the Andamans are responsible for prisoners' life in the island, but any action in the way of remission was the concern of the provincial Government. The strike created a great sensation in Bengal; there was an adjournment motion in the Assembly which was however defeated; there was a public meeting at the Calcutta Town Hall where a moving protest message from Poet Rabindranath Tagore was read out. These incidents will show that Bengal Ministers were criticised for actions for which they were not responsible.

The communal accents of Mr. Fazlul Huq were embarrassing to the Hindu Ministers of Bengal. The Chief Minister thought in terms of Moslems mainly.¹ Mr. Fazlul Huq stressed that he had thought it prudent in the interests of the Moslem community as a whole to enter into a coalition with the Moslem League Party² and that his fear was if the present Ministry resigned, the only alternative was the Congress Ministry.³ These statements exposed the Bengal Ministry to public condemnation.

As a result of the Gandhi-Anderson talk, eleven hundred detenus were immediately released in November 1937. It was creditable for the Bengal Cabinet. On the release of detenus Mr. Fazlul Huq stated in an interview: "I thank God that it was reserved for us, a Muslim Premier and a Muslim Home Minister, assisted by the members of the coalition group in the Legislative Assembly, composed mainly of Moslems and scheduled-caste Hindus, to initiate a policy which will bring happiness to thousands of Hindu homes." These statements by the Chief Minister stressing the communal character of the Bengal Ministry exposed it to criticism

¹ Mr. Fazlul Huq's letter, dated 20th July 1937, to the Moslem members of the Bengal legislature. See also his speech at the special session of the Moslem League in Calcutta, April 1938.

² Fazlul Huq's speech at a public meeting in Mymensingh, December 1937.

³ Fazlul Huq's statement in the Bengal Legislative Assembly, March 9, 1938.

in the Nationalist Press. The Press took exception to his assertions that he was being criticised because he was a Moslem and that the time had come for "direct action on the part of the Moslems of Bengal to say what they have got to say to remedy the state of things."¹ His flings at the Hindu officers, his speeches in connection with the Census of 1941 charging Hindus with inflating their numbers dishonestly, all these helped to inflame Hindu antipathy to the Bengal Ministry.

After less than nine months of the working of the reforms, the Bengal Provincial Hindu Sabha at its annual meeting in December 1937 passed the following resolution:

"The Sabha expresses its abhorrence of the repeated communal outbursts of Hon'ble Mr. Fazlul Huq in Eastern Bengal which are gravely embittering the relations between the communities and which may lead to disastrous consequences. The Sabha draws the attention of His Excellency the Governor of Bengal to those utterances and requests him to take suitable steps."

It is embarrassing for any Ministry whose Chief Minister is criticised on the grounds stated in this resolution. A feeling of resentment against the whole Ministry was thus growing in the minds of Hindus.

The Bengal Hindu Mahasabha was not slow to take full advantage of the resentment of Hindus against the Ministry, and the Hindus of Calcutta held various protest meetings in 1939 condemning the so-called anti-Hindu policy of the Bengal Ministry and expressing strong resentment at the introduction of various legislative and administrative measures, stated to be designed to cripple Hindus and crush them politically, economically and culturally. The meetings called upon Hindus to resist

¹ Fazlul Huq's speech at the first session of the all-India Moslem Students' Federation in Calcutta.

all encroachments by legitimate means in their power and to organise themselves effectively to defend their just rights and the honour of their community.

Mr. Fazlul Huq, sick of criticism in the Congress Press, threw out a challenge to show instances of injustice to the Hindus in Bengal. The challenge drew a public statement from Mr. B. C. Chatterjee and Dr. Syama Prasad Mookerjee on the 7th of December 1939 in which they gave a catalogue of Hindu grievances. They prefaced their statement with the following observations: "It will be idle for us to overlook the fact that Mr. Huq personally has to bear a large share of responsibility for aggravating communal bitterness in the province. We have made a careful analysis of the speeches which he has delivered as Chief Minister both in and outside Bengal. There can be no question that these highly provocative and communal utterances of his, some openly proclaiming the emergence of Muslim Raj in Bengal, have helped to create in this province a situation unparalleled in the history of British India."

The all-India Hindu Mahasabha took up the cause of the Hindus of Bengal and adopted a resolution in its Calcutta session in December 1939 protesting against the communal and reactionary policy of the Bengal Ministry and calling upon the Hindus of Bengal to unite and organise in defence of their rights, liberties and culture.

The all-Bengal Moslem Conference in Berhampore which met in October 1937 made the following demands: (i) the Calcutta Municipal Act to be amended to safeguard the interests of Moslems; (ii) the Calcutta University Act to be amended to ensure representation of Moslems in the Senate and the Syndicate; (iii) a Secondary Education Bill; (iv) the Calcutta University to abandon the sree and lotus symbol. The Government were also urged to proscribe Bankim Chandra Chatterjee's *Rajshinha* and *Anandamath*. The Conference was the supporter of the Bengal Ministry,

and its major demands were later accepted by the Ministry. All this raised apprehension in the minds of Hindus, and the Ministry was criticised as frankly communal in outlook.

The Punjab and Bengal are said to be the spheres of Moslem influence under the auspices of the Moslem League. As against the communal utterances of the Chief Minister of Bengal it is a relieving contrast to find Sir Sikander Hyat Khan, Chief Minister of the Punjab, convening a Provincial Leaders' Conference in Simla, June 1937, and declaring at the Conference: "On behalf of the Government I am determined with the full concurrence of my colleagues of the Cabinet to make officials and non-officials appreciate that any person high or low who stirs up communal mischief is an enemy of the Punjab, and therefore an enemy of the Government of the province constituted by the will of the people." The Conference appointed a Committee, consisting of officials and non-officials including the Ministers, to explore all avenues of promoting cordial relations among the various communities, to enquire and examine the causes of communal friction and to arrive at a definite finding. This was a welcome move, the more so when the Bengal Hindus were gaining the impression that the Bengal Ministry could not function without a communal bias. It is a bedrock principle of parliamentary government that Ministers are servants of the State, charged with duty to all parties, and that any discrimination in treatment on communal and even party grounds is unwholesome and unhealthy. A Ministry has politics and policy; ministerial politics should be the concern of the Party but ministerial policy should extend to all without bias or favour. It is for the public to criticise ministerial policy without reference to its politics; it is the duty of the civil service to see to the execution of ministerial policy unhampered by its politics. Sir John Anderson, Governor of Bengal, who was a member of the British Civil Service, explained that "the civil servant has nothing to do with

politics, and he is not entitled to make a parade of any particular political faith.”¹

In June 1937 Mr. B. C. Chatterjee, President of the Bengal Hindu Sabha, sought the Governor's personal intervention in the situation arising out of alleged sacrilegious acts in the district of Pabna. Mr. L. G. Pinnel, Secretary to the Governor, informed Mr. Chatterjee that “the personal exercise by the Governor of such responsibility (in respect of minorities and the prevention of grave menace to the peace and tranquillity of the province) cannot be properly invoked unless and until failure by the provincial Ministry to discharge its functions can be demonstrated; and even when such a special responsibility has arisen the responsibility of the Governor would not exclude that of the Minister.” The Governor, therefore, refused to interfere.

The Calcutta Municipal Amendment Bill 1939, as passed by the Bengal legislature, created great resentment in the press and on the platform controlled by Hindus. The Bill aimed at the creation of separate electorates, reservation of four elected and three nominated seats for scheduled castes, and extension of Moslem representation in the Corporation of Calcutta. Over fifty thousand Hindu citizens signed a representation requesting the Governor to withhold assent to the Bill. Sir Manmatha Nath Mukherjee, sometime acting Chief Justice of Bengal, submitted the representation on behalf of the Hindus. The signatories expressed their determination to resist by all legitimate means such invasion of the rights of Hindus. The nationalist Press supported the representation. It was a significant political phenomenon that the Hindus of Bengal who had all along pressed for the grant of full ministerial responsibility without safeguards for Hindus asked for the intervention of the Governor in opposition to the measures of the Ministry and the legislature. The *Amrita Bazar Patrika* on the 21st of July 1939 editorially supported the

¹ Sir John Anderson's Calcutta Rotary Club address on the 10th of August 1937.

Hindu representation as "a fit case for the intervention of the Governor in the interest of the minority community."

In the Punjab also, Hindus asked for the intervention of the Governor in respect of the Restitution of Mortgaged Lands Bill, the Land Alienation Amendment Bill, the Money-Lenders' Bill and the Punjab Marketing Bill. In July 1938, the Punjab Provincial Hindu Sabha appealed to the Governor to refuse his assent to the Bills prejudicially affecting non-agriculturists.

The proposal for the taxation of agricultural incomes greatly unnerved the Bihar landlords, and the Bihar Landholders' Conference on the 16th of September 1937, under the presidency of the Maharajadhiraja of Darbhanga, decided that zemindars would be prepared for non-violent civil disobedience, if necessary, to resist the enforcement of a tax on agricultural income.

The Bengal Coalition Ministry began to function with a large majority of supporters, although it was confronted by a most vocal Opposition consisting principally of the Congress representatives and the recalcitrant members of the Krishak Proja Party. The first division that showed a serious fracture in the facade of the Ministry was in respect of the cut motion of Maulvi Jonab Ali Mazumdar criticising the Government on their failure to fix the minimum price of jute by legislation which was defeated by 131 to 98 votes in the Assembly on the 23rd of March 1938. Although the Ministry was able to vindicate its position, it found that in order to do so the votes of European members were not only valuable but essential. It was however an exceptional case, as the Ministry continued to marshal the greater number of votes in its support.

The Cabinet was strongly entrenched in its position, but the team-spirit foundered on the rock of mutual rivalries and jealousies. The first symptom manifested itself in the demand for the resignation of Mr. Nausher Ali made by the Chief Minister. Under parliamentary conventions a mere

hint by the Chief Minister to one of his colleagues is sufficient, but Mr. Nausher Ali refused to resign at the express suggestion of his Chief Minister. Mr. Nausher Ali justified his action on the following specious plea: "If I am not resigning, it is because I want to force the resignation of the other Ministers with a view to the formation of a really stable Ministry which will reflect the Assembly and the opinion in our country. As I command the confidence of the majority of the House it will, in my opinion, be a betrayal of the trust reposed in me, if I were to resign and thereby strengthen the hands, at least for the time being, of the reactionaries." As he refused to resign, the whole Cabinet had to resign to eliminate him. The Cabinet resigned on the 22nd of June 1938 and it was reconstituted with the old Ministers minus Mr. Nausher Ali. The claim that the Ministry did not reflect public opinion in the Assembly was soon tested. The first no-confidence motions against all the Ministers individually were tabled in the Assembly on the 2nd of August 1938; one selected individual no-confidence motion was defeated by 130 to 111 votes. The Opposition undoubtedly secured the highest possible number of votes on this occasion.

The Bengal Cabinet was strengthened in November 1938 by the inclusion of Mr. Shamsuddin Ahmed, leader of the Opposition Krishak Proja Party, and Mr. Tamizuddin Khan, leader of the Independent Proja Party. Their acceptance of office weakened the Opposition greatly, but it is to be noted that Mr. Shamsuddin Ahmed could not bring his party members into the fold of the ministerial Coalition Party. It was for this reason that he began to feel uneasy about his acceptance of office, and on the first opportunity he resigned on the 16th of February 1939. He made a long statement in the Assembly charging the Bengal Ministry with indifference to Proja interests. The charge was an attempt at justification for his resignation. The charge was a puerile one, and the allegations were easily refuted by Mr. Fazlul Huq.

The resignation of Mr. Nalini Ranjan Sarker in 1939 had a constitutional significance of its own. The war resolution moved by the Chief Minister was accepted in the Bengal Legislative Assembly in December 1939 by 142 to 82 votes. The resolution assured the Government of India of full co-operation by the Government of Bengal for the successful prosecution of war and asked for Dominion Status as defined in the Statute of Westminster 1931, but it emphasised that the new Constitution should be based upon the consent and approval of minorities. Mr. Sarker opposed the part of the resolution which related to the consent and approval of minorities as conditions precedent to the framing of the future constitution of India, and remained neutral. The Coalition Party which was the Government party in the House grew uneasy and at its meeting passed a vote of no-confidence in Mr. Sarker. Mr. Sarker resigned but justified his stand by stating that under Section 64 of the Act an individual Minister was entitled to express his own views, that he got the permission of his colleagues to express his personal views, and that a Minister in a coalition Cabinet was entitled to exercise his freedom of vote and speech in an individual way. It is true that if a Minister receives the permission of his colleagues he can express his personal opinion, and that in a coalition Cabinet there should be more freedom than is allowed in a homogeneous Cabinet. But in the interest of collective responsibility and of Cabinet solidarity the expression of personal opinion on matters which represent the considered policy of the Cabinet should be discouraged.

The Press, the platform and the floor of the legislature reverberated with protests against the acts of omission and commission of the Bengal Ministry. If the legislature is taken to reflect the opinion of the country, as in a democratic country is inevitable, the Bengal Cabinet had had the support of the majority of the people.

It is interesting to note that the politics of the all-India Moslem League contributed directly to the fall of

the coalition Cabinet in Bengal in December 1941. Mr. Fazlul Huq was appointed, in his capacity as the Chief Minister of a province, a member of the National Defence Council under the scheme announced by the Government communique of 21st of July 1941. The Working Committee of the Moslem League, at its Bombay session, August 1941, asked him and others to resign and authorised the President Mr. Jinnah to take necessary action. Mr. Fazlul Huq in a letter to the Secretary of the Moslem League in September 1941 resigned the membership of the Working Committee and the Council of the Moslem League "as a mark of protest against the arbitrary use of powers vested in its President."

In 1941 the differences between Mr. Huq and some of his Moslem League colleagues in the Cabinet became pronounced. Mr. Huq openly said that he would be ready to settle differences if Mr. H. S. Suhrawardy went out of the Cabinet. The Coalition Party did not support Mr. Huq in demanding the removal of Mr. Suhrawardy. Accordingly, the Chief Minister's contention did not carry conviction to his Moslem League colleagues in the Cabinet. The position was of unique constitutional significance: the Chief Minister refused to work with a particular colleague whereas the Party stood by that colleague. The situation could be constitutionally dealt with only by the resignation of Mr. Fazlul Huq and of his colleagues. Mr. Fazlul Huq and his Cabinet, therefore, resigned. The Moslem League legislators formed a separate party under the leadership of Khwaja Sir Nazimuddin. When the resignation of the coalition Cabinet was accepted, Sir Nazimuddin was officially the one leader of a single majority party who was willing to form a Ministry and work the Constitution. But in the meantime Mr. Fazlul Huq formed a new party under the title of the Progressive Coalition Party, which included the Opposition members of the Congress Parliamentary Party. This Party could whip up the largest number of supporters, but it had no official recognition

as it was conceived and formed in private gatherings and announced after the resignation of the coalition Cabinet. Sir Nazimuddin's party was entitled to official recognition inasmuch as the Moslem League Party in the legislature was not a new one; it only coalesced with Mr. Fazlul Huq's supporters in 1937 in the task of forming the Ministry and officially absorbed Mr. Fazlul Huq and his supporters in the legislature. The Moslem League Party in the legislature had a recognised status whereas the adherents of Mr. Fazlul Huq, recruited from the Krishak Proja Party, ceased to have any official existence there. The Governor, however, recognised the new Progressive Coalition Party formed under the leadership of Mr. Fazlul Huq and commissioned him to form a Ministry. Bengal thus saw a new coalition Cabinet in December 1941 consisting mainly of those legislators who had previously occupied the Opposition benches.

Contrary to the treatment extended to the last Ministry from the day of its formation the new Ministry was heralded in the Press as progressive in outlook and able to explore the Constitution Act more effectively. Before the actual formation of the new Cabinet Mr. Sarat Chandra Bose, who was the leader of the unofficial wing of the Congress Party in the legislature and mainly instrumental in forming the new Cabinet under the leadership of Mr. Fazlul Huq, was arrested under the Defence of India Rules. His party representatives were, however, taken into the Cabinet. There was a demand in the press that the new Government of Bengal should claim Mr. Bose's release and make a suitable representation to the Government of India. It was given out in the legislature in 1942 that the Council of Ministers had made a representation to the Government of India for the release of Mr. Bose, whereas the Government of Bengal was not committed to such action. It was an event of great constitutional significance; the Cabinet functioned not as Government but as the Council of Ministers who could not influence the Governor to

accept their advice and submit a representation to the Government of India for the release of the leader of the strongest party supporting the new Ministry. The Cabinet, however, showed no uneasiness in accepting the position that Ministers do not form the Government, whereas the first principle of Cabinet rule was to bring about the functioning of the Council of Ministers as the directing organ of Government.

The second Ministry with Mr. Fazlul Huq as the Chief Minister formed in December 1941 did not include members of the Moslem League in the legislature, but it was more broadbased as it could command the support of the majority of Moslems, practically of all Hindus including the scheduled castes, and of Europeans. In the absence of Mr. Sarat Chandra Bose, Dr. Syama Prasad Mookerjee, the leader of the Hindu Mahasabha in Bengal and of the Hindu Nationalists in the Assembly, became the *de facto* leader of the united Hindu party and the most dominant personality in the Cabinet. It may be stated in this context that though the Ministry could enlist the support of the majority of Moslems in the Assembly, Moslem public opinion in the country swung against Mr. Fazlul Huq and his new Cabinet. He was bitterly attacked in the Moslem Press, and Mr. Huq was accused of dividing the Moslem community against the mandate of the Moslem League under Mr. M. A. Jinnah and making pact with the Hindu Mahasabha and the Forward Bloc of the Congress. The unpopularity of Mr. Huq with the members of his own community was evident from the results of the bye-elections between December 1941 to March 1943, where the Moslem League candidates successfully defeated the nominees of the Progressive Coalition Party. Owing to the war situation the Ministry had to approve many unpopular measures including the free use of the Defence of India Rules. Thus in spite of its overwhelming majority in the legislature and powerful backing of the Hindu Press the Ministry had to steer through troubled

waters and to discharge its duty under difficult circumstances. The spirit of communal harmony and concord was absent, but there was no communal conflict in the province during the sixteen months that the new Ministry had been in office. The general political situation became very complicated owing to disturbances that followed the arrest of Mahatma Gandhi and other Congress leaders in August 1942. A large number of people were put under arrest, and the police resorted to firing and lathi charges on several occasions in order to check the political disturbances and acts of lawlessness. Collective fines were imposed on the Hindus in several districts. Moslems as a class were exempted from the fines on the ground of their non-complicity in the movement. This placed the Hindu Ministers in an awkward position, and they felt unhappy. Rumours of sharp differences of opinion between the Ministry and the Governor and the permanent officials ruffled the political atmosphere. But the Ministry did not resign. The peak of political disturbances was reached in the district of Midnapore, resulting in humiliation, assault and murder of a number of public servants engaged in discharging their duty on behalf of Government. In quelling the disturbances it was alleged that undue severity was resorted to by the police and the Military, and there were also allegations of callous treatment of the public by some of the local officers. The press and the platform resounded with stories of repression and most heartless reprisal by the authorities. To crown all, the district was visited by one of the worst cyclones, followed by a severe typhoon in October 1942 causing deaths of several thousands of people in the affected area and destruction of properties. This was an unprecedented natural calamity of its kind, and the public expected the termination of repressive measures and inauguration of a policy of relief to the sufferers irrespective of political considerations. The public were not satisfied with the steps taken. Even the report of the calamity was not made available to the public

for several days. The people grew impatient and indignant. Dr. Syama Prasad Mookerjee resigned from the Cabinet on the 20th of November 1942. In a statement issued on the 23rd of November, Dr. Mookerjee gave the following grounds for his resignation:—

(a) General dissatisfaction with the attitude of the Governor.

(b) The policy behind the imposition of collective fines, especially in Midnapore during and after the cyclone, in respect of which the Governor was alleged to have refused to give relief.

(c) The “staggering feature” of the administration in Midnapore, the Governor declining to reconsider the policy.

Dr. Mookerjee in the said statement stated: “I know that all the members of the Council of Ministers feel very strongly about these matters, but they have found themselves helpless.”

A Press Note was issued by Government of Bengal on the 6th of December 1942. It regretted the campaign of vilification against Government and their officers in Midnapore for their alleged shortcomings. The Note stated: “No action has been taken to apportion, let alone to realise, the collective fines imposed in Midnapore for outrages involving the tax-payer in loss amounting to lakhs of rupees, and Government have no intention of taking away with one hand what they are distributing with the other to the victims of the recent calamity.”

From these conflicting statements it is rather difficult to ascertain whether the Council of Ministers unanimously or even by a substantial majority disapproved of the policy pursued by Government in Midnapore. In any case, Dr. Mookerjee did not agree with the measures adopted and severed his connection with the Government. It will be interesting to know from the constitutional point of view whether the Governor in exercise of his powers under Section 52 of the Government of India Act did actually

overrule the Cabinet or not. In view, however, of the fact that only Dr. Mookerjee resigned and others continued in office there is no reason to infer that the steps protested against by Dr. Mookerjee were taken by the Governor in discharge of his special responsibility unless one is prepared to attach much too importance to a subsequent observation made by Mr. A. K. Fazlul Huq on the 16th of March 1943 in the Assembly that there were cases in which the advice tendered had not been accepted by the Governor acting in his discretion. He, however, refused to give the number of instances and remarked without realising the constitutional significance of his statement that "these things have happened in India and do happen throughout the world where a similar system of administration is in force". In reply to a supplementary question on the same date (16th March 1943) the Chief Minister said: "I take the position that although I admit that there have been instances—I have used the plural which may mean any number between 2 and 200—in which the advice I have tendered has not been accepted by the Governor, I am not prepared to say in how many instances this has occurred."

Mr. Huq evidently was not impressed with the constitutional impropriety of Ministers sticking to office and at the same time complaining of the Governor's interference. It was expected that through conventions the Governor's right of interference in administrative matters would remain dormant and the sphere of ministerial responsibility would be widened. Ministers too instead of using their constitutional right of resignation on the issue of Governor's interference preferred to make a grievance of it in the legislature and exposed themselves to criticism by the Opposition. From the trend of events during the closing months of 1942 it was evident that the entire governmental machinery was out of gear because of a sharp conflict of opinion between the Governor and the permanent officials on the one hand and the Ministry on the other. It was

also doubtful whether Ministers could always speak with one voice even on important questions of policy. There was complaint that ministerial orders were not enforced by the permanent officials and that policies were initiated by the Governor against or without ministerial advice in discharge of his special responsibility of which he is the sole judge. Such complaint was voiced in the legislature by the Ministry, especially by Dr. Mookerjee who in his statement on resignation made staggering disclosures in the Assembly. This game of mud-throwing at the Governor and the permanent officials received support and even encouragement in the nationalist Press. It was an unfortunate situation. The Governor could not deny the charges publicly on the score of constitutional propriety; Ministers collectively did not assert their constitutional right by tendering resignations of their office. All this proved that the experiment of parliamentary government in Bengal suffered a great deal for the pronounced absence of agreement between the Governor and the new Ministry. The Opposition suspected that the Ministry advertised its helplessness with a view to winning over public sympathy and support and consolidating its position in the House.

On the 29th of March 1943, Mr. Fazlul Huq announced in the Assembly that he was sent for by the Governor on the 28th and was asked to sign a typed letter of resignation which he did and that his resignation had been accepted by the Governor. The demands for the annual grants were not yet fully sanctioned by the Assembly. The Speaker (Mr. Nausher Ali) held that the Chief Minister having resigned the other Ministers were *functus officio* and in the absence of a Government the business of the House could not be proceeded with, and the House was adjourned for nearly two weeks. According to the audit rules no expenditure could be incurred after the 31st of March without a fresh grant. There was no time for the Governor to prorogue the House and to resummon it for passing the Budget before the 31st of March. Accordingly, to secure

supply the Governor suspended the Constitution under Section 93 of the Government of India Act 1935 and assumed charge of the administration of the province. The situation involved two important and interesting constitutional issues, *viz.*, (1) whether all the members of the Council of Ministers became *functus officio* on the resignation of the Chief Minister being accepted by the Governor, (2) whether Section 93 was properly used to get over the deadlock created by the adjournment of the House before the budget was fully passed.

(1) Does the resignation of the Chief Minister dissolve a Cabinet ?

Mr. Gladstone, perhaps the best known Parliamentarian of all times, expressed the view that "as a rule, the resignation of the first Minister, as if removing the bond of cohesion in the Cabinet, has the effect of dissolving it. A conspicuous instance of this was furnished by Sir Robert Peel in 1846; when the dissolution of the Administration, after it had carried the repeal of the Corn Laws, was understood to be due not so much to a united deliberation and decision as to his initiative". Prof. Ivor Jennings in his standard work on *Cabinet Government* is of the opinion that "the Prime Minister can, by a personal resignation, force a dissolution of the Government". He thinks that there appears to be no reason for Gladstone's characteristic qualification in the words 'as a rule'. Prof. Keith is also of the same opinion. In his book on *Responsible Government in the Dominions* he states his view as follows: "The rule in the Dominions, as in the United Kingdom, is that the unity of the Cabinet depends on the personality of the Prime Minister, and it follows therefore that on his resignation the whole body of Ministers are held to have resigned". In his book on *The British Cabinet System* Prof. Keith states: "A Ministry is as much dissolved by the resignation of the Prime Minister, and that is so whether the other members wish resignation or not. This was frankly admitted by Lord John Russel when Lord

Melbourne determined to resign in 1841 and Sir Robert Peel insisted on it in 1846 with the result of Cabinet acquiescence. It is now unquestioned".

So far as this province is concerned, this would also appear to be the correct view, provided the Chief Minister insists on the resignation of his colleagues, as under Article VII of the Instrument of Instructions the Governor is to select his Cabinet in consultation with the Chief Minister. But do Ministers become *functus officio* immediately on the resignation of the Chief Minister? The answer is definitely 'No'. On this point Prof. Keith observes as follows:—"Resignation is in law not a cessation of tenure of office. The Prime Minister and his colleagues, by constitutional practice, remain at their posts pending the moment when a new Ministry is constituted and is prepared to take over. If the new Prime Minister retains the Ministers in their existing offices there is no need for re-appointment; they retain their office with tenure unaffected by the fact that the Ministry has been dissolved. On the other hand, each Minister holds until asked to resign his post on the understanding that he will relinquish it at the moment when he is asked to do so; if he fails he would forthwith be dismissed by the King on the advice of the Prime Minister". This view is supported also by Prof. Ivor Jennings.

In 1933 when Mr. Baldwin succeeded Mr. Macdonald as Prime Minister, many of the Ministers retained their offices and were not formally re-appointed. Mr. Lansbury, the Leader of the Opposition, challenged this process as unconstitutional. Mr. Baldwin summed up the position as follows:—

"I have had all these cases looked up in the Privy Council Office, which is the office responsible for the swearing in of all Ministers when they take office, and there are precedents for the resignation of a Prime Minister without the other Members of the Administration vacating

office going back at least as far as 1761 when the elder Pitt retired without his retirement involving the downfall of the rest of the Cabinet. When Lord Goderich, afterwards Lord Ripon, formed a Government after the death of George Canning in 1827 a number of the members of the Cabinet retained their offices and were not re-appointed or re-sworn and further examples occurred when Lord Russel in 1865 succeeded Lord Palmerston, in 1902 when Mr. Balfour succeeded Lord Salisbury, in 1908 when Mr. Asquith succeeded Sir Henry Campbell-Bannerman, and in 1923 when I succeeded Mr. Bonar Law. What happens in fact is that when a Prime Minister resigns the King, if he accepts the resignation, immediately sends for some one to carry on the Government. Everyone places his resignation formally in the hands of whoever is to form the Government, so as to give him a free hand to make any changes he may think desirable, but until any one or all of those resignations are accepted the office goes on without any break at all, and no Minister receives a seal afresh or is sworn in those circumstances, unless a change is involved by a resignation having been accepted and some one else taking office. That is a summary of the constitutional position which has been the practice certainly, as I said, for about 150 years or more. It applies right through the Government and to all Ministers".

So far as this province is concerned, Section 50 of the Constitution Act provides in effect that there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions which are not in his discretion. It would, therefore, appear to be imperative that there must at all times be a Council of Ministers, as in the absence of such a Council, in matters not affecting the discretion of the Governor, he will not receive any aid and advice and consequently he would be incompetent to function. There cannot, therefore, be any interregnum when there is no Council of Ministers, and the old Council of Ministers should continue until it is replaced.

(2) Section 93 of the Government of India Act provides for the taking over of the administration in case of a breakdown of the usual constitutional machinery. It empowers the Governor to assume charge of the administration after suspending the entire constitution or any portion of it. This Section provides for the introduction of the Governor's personal administration in the place of constitutional government and also invests him with authority to legislate. Section 93 contemplates a situation which is expected to last for a limited period, after which the usual constitutional machinery is to be revived and brought into operation again. The Section places the Governor virtually in the position of a dictator and introduces the form of government that prevailed in the early days of British rule in India.

The deadlock created in Bengal can hardly be described as a "failure of the constitutional machinery" as contemplated in Section 93. The situation that occurred in Bengal on the 29th of March 1943 was unforeseen and not actually provided for in the Constitution Act of 1935. The Governor was faced with a peculiar dilemma. Though Section 93 strictly speaking was not applicable, its use was unavoidable in the circumstances. It shows that, however well balanced the constitutional machinery might be, its successful and smooth working depends very much on the spirit in which it is worked and on the maintenance of complete harmony amongst the operators handling the machinery.

The Governor's rule under Section 93 did not last long; it was soon replaced by the formation of a new Ministry under the leadership of Khwaja Sir Nazimuddin in April 1943. It was also a coalition Cabinet with the Moslem League Party as its dominant partner.

The Cabinet Office

Under the Reforms Act of 1919, the Governor had the necessary direction, embodied in the Instrument of Instructions, that he would further the purpose of the Act to the

end that "the people should acquire such conventions as would best and soonest fit them for self-government." Accordingly, although it was a duty of the Governor to keep the responsibility for the reserved and the transferred subjects clear and distinct, the Instrument provided that "nevertheless, you shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors." There was a wholesome instruction that in dissenting from the opinion of a Minister, the Governor should have due regard to the Minister's relations with the Legislative Council and to the wishes of the people as expressed by their representatives. This was convenient to establish the convention that the Minister's advice should be interfered with only when it failed to represent the popular wishes. Accordingly, in the Cabinet where Dyarchy was statutorily set up, a summary of the facts together with extracts from essential papers in respect of a case brought before the Executive Councillors and Ministers was distributed to Members and Ministers. The Governor was to direct that a case arising in a transferred department should be circulated to all the Ministers; the Secretary in the department to which the case belonged attended the joint meetings of the Executive Councillors and Ministers.

The provisions in the Act of 1919 that in case of difference of opinion on any question brought before a meeting of the Governor's Executive Council the decision of the majority will prevail (Sec. 50) and that the Governor in relation to the transferred subjects shall be "guided" by the advice of his Ministers "unless he sees sufficient cause to dissent from their opinion" (Section 52) were undoubtedly helpful for accelerating the pace of responsible government, especially when those provisions are read together with the Instrument of Instructions to the Governor.

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Under the Act of 1919 there were various Standing Committees where questions of departmental policy and schemes involving large expenditure were considered. Their recommendations were, however, advisory, but it is important to note that four non-official members of the Legislative Council were appointed by the Governor to each Committee "after consideration of the names of the persons elected for each Committee by the Legislative Council on the basis of a single transferable vote". The Member or Minister in charge of the department concerned was the Chairman; the departmental Secretary was Secretary to the Committee. The Chairman of the Standing Committee had a large hand in deciding which subjects should be placed before the Committee. The Act also contemplated appointment of Council Secretaries from non-official members of the local legislature to assist the members of the Executive Council and Ministers in such duties as may be assigned to them.

In exercise of the powers conferred by sub-sections (2) and (3) of Section 59 of the Government of India Act 1935, the Governor can make rules for the conduct of the business of Government. The Council of Ministers is responsible for the advice tendered to the Governor. Matters may be brought before the Council of Ministers by the direction of the Governor acting in his discretion or by the direction of the Chief Minister or by the Minister in charge of the case. In Bengal the Governor made the rule that (1) the agenda for the meetings of the Council of Ministers shall be subject to the approval of the Governor in his individual judgment, (2) the Secretary in administrative charge of a department shall transmit to the Governor all such information with respect to the business of government, especially the business involving special responsibility of the Governor, (3) the Finance Department shall be consulted in any matter affecting the finance of the province, and (4) the Secretary of the department concerned shall be responsible for the careful observance of the rules of business.

The Cabinet procedure in Bengal under the Act of 1935 is as follows. The Home Department under the orders of the Chief Secretary circulates regularly to all Ministers, the Secretary to the Governor and all Secretaries of Departments two lists intended for discussion in the Council of Ministers: the one list including the cases which have been examined by the departments concerned and have matured for consideration and the other list including proposals which are under the consideration of the various departments of the Government of Bengal. Proposals are examined by the department concerned therein; other departments are consulted when they are likely to be affected by the proposals under consideration. A memorandum together with relevant papers is circulated to all Ministers, the Secretary to the Governor and the Cabinet Secretary to facilitate discussion in the Cabinet.

All cases involving legislation, financial consideration, taxation, raising of loans are to be brought before the Council of Ministers before such legislation is introduced or orders are issued.

The Cabinet Secretary will obtain the orders of the Council of Ministers at each meeting for the subjects to be entered in the agenda for the next forthcoming meeting. The Chief Secretary will accordingly be informed and he will prepare the agenda and take steps for circulation of copies of it to all Ministers, the Secretary to the Governor and all Secretaries of Government departments. Any urgent or emergent matter may be included in the agenda on special instructions of the Governor or the Chief Minister which must be obtained by the Department concerned and reported to the Chief Secretary for necessary action. It is the privilege of the Chief Minister to suggest and intimate that a particular subject should be examined by the Department concerned for discussion in the Council of Ministers. The Council of Ministers may refer any matter to the sub-committee of the Council, and in the absence of any direction that the decision of the sub-committee

will be binding without reference to the Council of Ministers, the recommendations of such sub-committee are advisory.

If any memorandum is circulated with the consent of the Chief Minister and it is found that there is substantial agreement thereon, the Chief Minister may direct that the case need not be taken up in the Council of Ministers. Such case shall be submitted to the Governor before orders are issued. It is in conformity with the design of the Act of 1935 that all orders or instruments made or executed by or on behalf of the provincial Government shall be made by or under orders of the Governor of Bengal. Cabinet proceedings or discussions between Ministers and Governor cannot be disclosed without the consent of the Governor given in his discretion.

The Chief Minister may call for papers from any department; the Finance Minister may ask for papers from any department relating to cases where a financial consideration is involved; any Minister may ask to see papers in any other department if they are required for the disposal of a case in his department.

There is no Cabinet office, as is found in England, whose functions are to see to the circulation of the memoranda, the compilation of the agenda, the issuing of summons of meetings, the circulation of the conclusions of the Cabinet and preparation of the reports of Cabinet Committees and the keeping of the Cabinet papers and conclusions. The functions of the Cabinet office here practically fall on the Chief Secretary. -

There are Standing Cabinet Committees as we find in England. The Home Affairs Committee, a standing Committee of the British Cabinet, considers the technical aspects of Government Bills such as questions of drafting and legal matters. Here in Bengal, after the policy of legislation is accepted, the Bill is drafted by the Legislative Department. The Bengal Ministry formed non-official Standing Committees of the members of the legislature,

chiefly nominated from the Coalition Party supporting the Government, for examining the Government Bills. Before the Reforms of 1935, there were statutory Standing Committees elected by the legislature to advise the Ministry on all matters.

Cabinet decisions are generally made in Bengal by compromise. There were occasions when votes were taken. In the matter of arriving at a decision, the Governor exercises helpful influence and promotes compromise. He ascertains the general sense of the Cabinet on any particular issue.

The Council of Ministers should have Standing Committees composed of competent persons, assisted by an able staff. Ad hoc Committees may also be appointed. There is no doubt that an Economic Advisory Council of the Cabinet is essential. Mr. Ramsay MacDonald formed such a Council in England in 1930. Economic measures and legislation are at once vital and complicated; they require continuous study and close examination. Such a vital task should not be left to the Cabinet or to the whims of the Party in power.

CHAPTER V

PROVINCIAL AUTONOMY

The Government of India Act 1935 contemplates provincial autonomy and the federation of both British India and Indian India. Provincial autonomy came into force on the 1st of April 1937; the inauguration of federation was put off with the result that the Central Government has till now remained unreformed. With the setting up of provincial autonomy, autonomous provinces became responsible for the subjects set out in the provincial list. The activities of the Central Government will remain the same subject to the limitation resulting from the establishment of provincial autonomy. Section 321 of the Government of India Act 1935 states that the Government of India Act 1919 and other Acts shall be repealed as specified in the tenth schedule. Section 317 provides that the Government of India Act 1919 as set out in the ninth schedule shall continue to have effect. Section 316 provides that during the transitional period the powers conferred on the federal legislature shall be exercisable by the Indian legislature, and accordingly references in the provisions of the Act of 1935 to the federal legislature and federal laws are to be construed as references to the Indian legislature and laws of the Indian legislature. The Governor-General and his Council and the Indian legislature continued to function in respect of the subjects that remained as Central subjects. It is to be noted that the Indian legislature functioning under Part XIII of the Act of 1935 is not the same juristic body as that which functioned under the Act of 1919. It is however purely an academic question whether on the coming into operation of the Government of India Act 1935 there has been a notional dissolution of the Indian legislature that functioned under the Act of 1919 and a subsequent resurrection of it with reduced powers and altered composition by virtue of Part XIII of the Act

of 1935. But this notional dissolution and notional resurrection are not to affect the Bills passed by Central legislature before the introduction of Part XIII of the Act of 1935 and assented to by the Governor-General thereafter.¹ The continuance of responsible Governments in the provinces and non-responsible Government in the Centre exercised damaging influence on the growth of representative government in the country. It prejudiced the working of provincial autonomy to a considerable extent.

It was the scheme, since the inception of the Reforms Act of 1919, that a convention should grow that "only in exceptional circumstances should the Secretary of State for India be called upon to intervene in matters of purely Indian interest where the Government and the legislature of India are in agreement", and that over the transferred subjects "the control of the Governor-General in Council and of the Secretary of State should be restricted in future within the narrowest possible limits". All this was meant to accelerate the pace of provincial autonomy.

Provincial autonomy, in the accurate sense of the term, signifies the freedom of provincial Governments from outside control or interference. It implies the existence of two Governments, Central and Provincial. In their own spheres the constitution of the Central Government and of the provincial Governments may be autocratic or democratic. Even the provincial Governments may vary *inter se* as to their constitutions. That does not affect provincial autonomy, but in popular parlance provincial autonomy means responsible self-government in the provinces. The basic feature of provincial autonomy is the division of functions wherein the Central and provincial Governments will have

¹ *Sh. Manibai v. Bhimji Lalji*, December 1940 (4 F.L.J. H.C. 302). The Hindu Women's Rights to Property Act of 1937 was passed by the Indian legislature when the Government of India Act of 1919 was in operation but the Governor-General's assent was given after the coming into force of Part III of the Constitution Act of 1935. It was a valid Act because of the provisions contained in Section 317 and Schedule IX of the Act of 1935.

exclusive jurisdiction in respect of allotted subjects. The Act of 1935 seeks to introduce the essential feature of provincial autonomy, although the limitations on autonomy are manifold. This limited nature of autonomy has resulted chiefly from the fact that the new federal constitution has to be carved out of a unitary form of government. The traditions of control by the Central Government could not be got over. The federation of India was not the union of sovereign States; it arose from the devolution of powers by the Central Government to the provinces. There was another complication. Indian opinion was divided with regard to the grant of residuary power to the Centre or to the provinces. Hindu India, it may be said, was in favour of maintaining the Centre in a dominant position; Moslem India wished to make the provinces strong. To bridge these two diametrically opposite points of view, the three legislative lists, *viz.*, the federal list, the provincial list, and the concurrent list, were made as exhaustive as possible so that little or nothing was left for the residuary list. This has made the Indian Constitution unique, and Sir Samuel Hoare when Secretary of State for India agreed that "it means complications" and that "it also means the possibility of increased litigation".

The Act of 1935 divided British India into eleven provinces, *viz.*, Assam, Bengal, Bihar, Bombay, Central Provinces, Madras, North-West Frontier, Orissa, Punjab, Sind, United Provinces. The provinces of Sind and Orissa were new; the creation of Sind affected the territory of Bombay Presidency, and the creation of Orissa touched on the old jurisdiction of Bihar and Madras. The Simon Commission commented that "the existing provincial boundaries in more than one case embrace areas and peoples of no natural affinity, and sometimes separate those who might under a different scheme be more naturally united." The case for readjustment of boundaries on scientific lines is very strong, as, to quote the Simon Commission, "the present provinces are not ideal areas for self-government."

Under Section 290, the readjustment of provincial boundaries is the concern of His Majesty, although the opinion of the Federal Government and provincial Governments will be taken thereon. From a statement made by the Under-Secretary of State for India in the House of Commons in 1938 it can be gathered that the British Government have no intention of readjusting the existing provincial boundaries.

Paragraph 20 of the Fifth Schedule to the Government of India Act 1935 states that the Governor, in his individual judgment, may make rules for carrying into effect certain provisions of the Fifth Schedule (regarding composition of provincial legislatures) and the provisions of the Sixth Schedule (regarding franchise) and securing the due constitution of the provincial legislature, especially with respect to the notification of vacancies, the nomination of candidates, the conduct of elections, the expenses of candidates at elections, corrupt practices and other offences in connection with elections, the decision of doubts and disputes arising out of elections. The Government of India Provincial Elections (Corrupt Practices and Election Petitions) Order 1936 provides that no election shall be called in question except by an election petition presented to the Governor who shall, in his individual judgment, appoint as Commissioners for the trial of the petition three persons who have been, or are eligible to be appointed, judges of a High Court. The tribunal has to decide the validity of elections, and its decision is intended to be final. The power of the High Court to issue a writ of certiorari where an election has been set aside by a tribunal acting wholly without jurisdiction remains. Elections to the Assembly can be declared void only by the Governor or a tribunal appointed by him.¹

¹ In *B. S. Moorthy v. Eli Vadapalli and others*, it was held that the District Magistrate had only power to inquire into primary elections, that is, elections to the panel of candidates (1937, 1 F.L.J. H.C. 4).

With the introduction of provincial autonomy in the British Indian provinces, the principle underlying the process of questions and answers in the House of Commons has undergone modification. A question is not put to a Minister in the House of Commons unless he is responsible for the subject matter and in a position to intervene to secure a particular line of action. At present, only those questions regarding provincial affairs are in order in the House of Commons where the action at issue has been taken by the Governor without consulting the Ministers or against their advice or in the alternative the Governor is in possession of power applicable to the case which he failed to exercise. So far as the Ministers are responsible to the provincial legislature for the government of the province, it would be inappropriate if the House of Commons were to call in question or criticise by questions and answers their policies and activities. So long as Part II of the Act of 1935 relating to Federation is not brought into force, there is no change in the relations between the Government of India and Parliament. The Central Government remains legally subject in respect of all its operations to the direction and control of the United Kingdom Government. Accordingly, there is no necessity for any change in the practice or policy regarding questions and answers in the House of Commons relating to the operations of the Government of India. The matter was explained by Mr. Neville Chamberlain, Prime Minister of Great Britain, in reply to a question by Mr. Churchill in the House of Commons on the 17th of June 1937.

The Provincial Legislatures

There is a single Legislative Assembly in the Punjab, the Central Provinces, the North-West Frontier Province, Sind and Orissa, but there are two Chambers in Madras, Bombay, Bengal, the United Provinces, Bihar and Assam. The franchise has been widened, but it is far short of adult franchise; the composition of the lower House is

determined by the Communal Award of August 4, 1932, modified by the Poona Pact of September 25, 1932. Territorial constituencies are formed to fill seats for seven groups, viz., General (that is, Hindus including Scheduled Castes), Muhammadans, Europeans, Anglo-Indians, Indian Christians, Sikhs, and Women. There are representations of special interests such as landlords, labour, commerce, university. In the Upper House there is no arrangement for representation of special interests by election, but the inequalities of representation resulting from election are to be redressed by nomination. All the members of the Upper House except the nominated ones are, in the case of the provinces other than Bengal and Bihar, directly elected by territorial constituencies, but in Bengal and Bihar a substantial number of members of the Legislative Council (27 in Bengal and 12 in Bihar) are elected by the Legislative Assembly in accordance with the system of proportional representation by means of the single transferable vote. The limited franchise and the communal composition of the legislature show the undemocratic character of the provincial constitution, apart from the Governor's special responsibilities and other discretionary powers. The room for the expansion of self-government in the provinces is thus narrow, and many good effects of the new Constitution have been neutralised by the emphasis on communal considerations, conceived and planned by the Communal Award of 1932. No person may be a member of both Chambers. Rules of procedure may be made by either Chamber.

The composition of the provincial legislatures may be studied from the following allocation of seats.

Bengal Legislative Assembly—78 General seats (including 30 for scheduled castes); 117 Muhammadan seats; 3 Anglo-Indian seats; 11 European seats; 2 Indian Christian seats; 19 Commerce seats; 5 Landholders seats; 2 University seats; 8 Labour seats; 5 seats for women (2 for General,

2 for Muhammadan and 1 for Anglo-Indian seats); Total seats 250.

Bengal Legislative Council—10 General seats; 17 Muhammadan seats; 3 European seats; 27 seats to be filed by the Legislative Assembly; and 6 to 8 nominated seats.

Madras Legislative Assembly—146 General seats (including 30 for Scheduled castes); 1 seat for backward areas and tribes; 28 Muhammadan seats; 2 Anglo-Indian seats; 8 Indian Christian seats; 3 European seats; 6 Commerce seats; 6 Landholders seats; 1 University seat; 6 Labour seats; 8 seats for women (6 General, 1 Muhammadan and 1 Indian Christian seats); Total seats 215.

Madras Legislative Council—35 General seats; 7 Muhammadan seats; 1 European seat; 3 Indian Christian seats; 8 to 10 nominated seats.

Bombay Legislative Assembly—114 General seats (including 15 for scheduled castes); 1 seat reserved for backward areas and tribes; 29 Muhammadan seats; 2 Anglo-Indian seats; 3 European seats; 3 Indian Christian seats; 7 Commerce seats; 2 Landholders seats; 1 University seat; 7 Labour seats; 6 seats for Women (5 General and 1 Muhammadan seats); Total seats 175.

Bombay Legislative Council—20 General seats; 5 Muhammadan seats; 1 European seat; 3 to 4 nominated seats.

The United Provinces Legislative Assembly—140 General seats (including 20 for Scheduled castes); 64 Muhammadan seats; 1 Anglo-Indian seat; 2 European seats; 2 Indian Christian seats; 3 Commerce seats; 6 Landholders seats; 1 University seat; 3 Labour seats; 6 seats for women (4 General and 2 Muhammadan seats); Total seats 228.

The United Provinces Legislative Council—34 General seats; 17 Muhammadan seats; 1 European seat; 6 to 8 nominated seats.

Bihar Legislative Assembly—86 General seats (including 15 for Scheduled castes); 7 seats reserved for backward

areas and tribes; 39 Muhammadan seats; 1 Anglo-Indian seat; 2 European seats; 1 Indian Christian seat; 4 Commerce seats; 4 Landholders' seats; 1 University seat; 3 Labour seats; 4 seats for women (3 General and 1 Muhammadan seats); Total seats 152.

Bihar Legislative Council—9 General seats; 4 Muhammadan seats; 1 European seat; 12 seats to be filled by the Legislative Assembly; 3 to 4 nominated seats.

Assam Legislative Assembly—17 General seats (including 7 for Scheduled Castes); 9 seats for backward areas and tribes; 34 Muhammadan seats; 1 European seat; 1 Indian Christian seat; 11 Commerce seats; 4 Labour seats; 1 seat for women. Total seats 108.

Assam Legislative Council—10 General seats; 6 Muhammadan seats; 2 European seats; 3 to 4 nominated seats.

The Punjab Legislative Assembly—42 General seats (including 8 for Scheduled Castes); 31 Sikh seats; 84 Muhammadan seats; 1 Anglo-Indian seat; 1 European seat; 2 Indian Christian seats; 1 Commerce seat; 5 Landholders seats; 1 University seat; 3 Labour seats; 4 seats for women (1 General, 1 Sikh and 2 Muhammadan seats); Total seats 175.

The Central Provinces Legislative Assembly—84 General seats (including 20 for Scheduled Castes); 1 seat for backward areas and tribes; 14 Muhammadan seats; 1 Anglo-Indian seat; 1 European seat; 2 Commerce seats; 3 Landholders seats; 1 University seat; 2 Labour seats; 3 General seats for women.

Orissa Legislative Assembly—44 General seats (including 6 for Scheduled Castes); 5 seats reserved for backward areas and tribes; 4 Muhammadan seats; 1 Indian Christian seat; 1 Commerce seat; 2 Landholders seats; 1 Labour seat; 2 General seats for women; Total seats 60.

Sind Legislative Assembly—18 General seats; 33 Muhammadan seats; 2 European seats; 2 Commerce seats;

2 Landholders seats; 1 Labour seat; 2 seats for women (1 General and 1 Muhammadan seat); Total seats 60.

The N.W.F. Province Legislative Assembly—9 General seats; 3 Sikh seats; 36 Muhammadan seats; 2 Landholders seats; Total seats 50.

The franchise qualifications are generally dependent on taxation, property and literacy; they vary from province to province. Mr. Butler explaining Schedule VI to the Act of 1935 (which incorporates provisions as to the franchise) stated in the House of Commons: "The percentage of the total electorate to the total population is just under 14 per cent, and the percentage of the total electorate to the total adult population is 27 per cent. The percentage of total male electorate to the total adult male population will be about 43 per cent." Schedule VI relates solely to the franchise for territorial constituencies; it does not include the franchise for provincial Upper Houses, or for electoral colleges or for special interests. The general findings of the Franchise Committee were included in the schedule. The franchise qualifications for the Upper House are higher than those for the Legislative Assemblies.

The second Chamber in Assam acted as a bar to the smooth passing of the Assam Agricultural Income-Tax Act; the second Chambers in Bihar and the United Provinces helped the compromise on the tenancy questions of the respective provinces. The Upper House thus has acted as a helpful agency of conservative feeling. But the second Chamber in Bengal showed no conservative instinct in dealing with forward legislation; rather it tried in its own way to champion the cause of the people to the detriment of vested interests. It is significant that the Bengal Legislative Council deleted a whole chapter on the speedy realisation of rents, inserted by the Select Committee on the Bengal Tenancy Amendment Bill 1938 apparently with the tacit consent of the Ministry. With regard to the Calcutta Municipal Amendment Bill reducing

the strength of the Hindu members, the Bengal Legislative Council once refused to accept certain amendments of the Lower House, but the situation was righted later, and the Upper House did not attempt to vindicate its position as a revising Chamber.

The rights of non-member Ministers in the Upper House were co-extensive with those of its members barring the right of voting. Sections 64, 66 (2), 84 and 87 of the Act of 1935 read together make it quite clear that a Minister who does not happen to be a member of the Legislative Council has the right to initiate proceedings in the Upper House. But a non-member Minister should not function as the leader of the Upper House. Mr. S. C. Mitter, President of the Bengal Legislative Council, ruled that a leader of the Council must be a member of it.

The Bengal Legislative Council vindicated its position by bringing forward a motion drawing the attention of the Governor to the fact that his Ministers (who were then all members of the Legislative Assembly) by persistently abstaining from attending the meetings of the Legislative Council had committed a breach of the privilege of the House. Leaders of all groups including the Ministerial Coalition Party unreservedly showed their resentment at what they regarded as disrespect to the House. On the Ministers giving an assurance that they would thenceforth attend the House regularly the motion was withdrawn.

India—A Economic Unit

If we analyse the conditions of economic prosperity in a country, we must accept two principles of far-reaching importance viz., no nation can remain in complete isolation and attain economic self-sufficiency, and national economic policies and international economic co-operation interact. The potentialities of India's internal market are great; but its real purchasing power has made it a relatively small

market. India cannot lose the foreign markets for her exportable surplus in jute, cotton, oil-seeds, tea, hides etc.; the masses will be seriously affected by the world price-levels for their products; India's internal development in regard to the building up of production and standards of living is bound up with her public finance, communications, and exchange and tariff policies. Sir George Schuster rightly points out that "by industrial development alone it will be impossible to lift the whole level of Indian standards adequately and indeed there can be no sure foundation for industrial progress itself unless the condition and purchasing power of the agricultural population are concurrently improved."¹ The reciprocity between agricultural and industrial improvement is pronounced. If the countryside remains backward in the standard of living, the wages and manner of life of the urban worker can hardly be improved. It is the peasant who in the last resort must support the industrial apparatus of India, and, to quote Sir Frank Noyce, "the most striking element in the movement of labour in India is not the villager's willingness to leave his village to seek his fortune but his anxiety to get back to it." But he can be made to suffer by a high protective policy resulting in diminished foreign demand for his agricultural products, by artificial tariffs and increased cost of production in industries enhancing the price of industrial goods, by subsidy to bankrupt industries occasioning extra taxation. It is the balance of progress between industry and agriculture that should be the economic goal of India, and the policy to be pursued must take stock of the potentialities of the country on both the counts. Provincial autonomy has earmarked land and agriculture as exclusive provincial subjects, but currency, banking, customs duties, railways, development of industries have fallen under the list of federal subjects. In short, agriculture and agriculturists are the concern of the provincial Government whereas urban

¹ Part II of "India and Democracy", 1941.

industries and workers are to be looked after by the Federal Government. But the need is a co-ordinated policy, and unless there is healthy co-operation between the Centre and provincial units, the fashioning of any progressive economic policy will be rendered impossible. Accordingly, in actual working the augmentation of the Central power in respect of economic issues becomes inevitable, and to that extent provincial autonomy should be made to suffer. Such an eventuality is disconcerting to those who insist on the utmost extension of provincial autonomy. The emergency situation arising out of the War has revealed the need for an all-India policy in economic spheres, and even with regard to food policy the dominance of the Central Government has grown and expanded beyond measure, although agricultural production is an exclusively provincial matter.

Under the Constitution Act of 1935 British India is taken as one economic unit, notwithstanding provincial autonomy. Section 297 aims at the promotion of free trade in British India and the removal of internal trade barriers. The provincial legislatures and provincial Governments are forbidden to restrict inter-provincial trade. The free circulation of trade in India is secured. Section 297 (1) (a) of the Constitution Act only refers to legislation with respect to entry No. 27 and entry No. 29 in the provincial legislative list; it does not restrict the provinces in regard to excise and health questions. The province can take measures under items 30 and 40 of the provincial legislative list, even if they lead to the contravention of the principle of free trade. The Canadian and Australian Acts provide for free trade amongst the different units. In the Indian Act there is no legal prohibition against discrimination between the provinces or units by the Federal Government, but the Commonwealth of Australia contains specific instructions not to give any preference to one State or part thereof over another State or part thereof. There is no specific power, under the Indian Act, in the federal legislature or Government to

regulate inter-provincial trade and commerce, as "inter-provincial trade" is not enumerated at all in the legislative lists. It can, therefore, be argued that "the power to regulate inter-provincial trade in so far as it could be validly regulated must be obtained by piecing together powers under several enumerated heads which are assigned to the federal or concurrent lists. If there is any gap in the power to regulate inter-provincial trade, it must be taken that the gap is deliberate, and if inconvenience should be felt from the absence of power, recourse should be had to the powers of the Governor-General under Section 104 to allocate that power to the appropriate legislative organ." By reason of the absence of "inter-provincial trade" from the federal list, such regulation must of necessity be indirect. The regulation of inter-provincial trade without affecting trade and commerce within a province (No. 27 of the provincial legislative list) is extremely difficult.

Provincial Finance

In the scheme of Dyarchy under the Act of 1919 which partitioned the domain of provincial Government into two fields, it was contemplated that "each side of the Government will advise and assist the other; neither will control or impede the other." The scheme foundered chiefly on inadequate provincial revenues; the principle followed was the allocation of the major proportion of the revenues to the reserved subjects. The suggestion that certain sources of provincial revenues should be earmarked for the transferred subjects was discounted from the beginning.¹ Ministers could not thus make out more revenues for the nation-building activities by new taxes as the greater portion of provincial receipts was swallowed up by the reserved department. Taxation proposals required that both parts

¹ The Joint Select Committee of Parliament on the Government of India Bill 1919 did not endorse the suggestion; they recommended that two-thirds should be allocated to the reserved subjects.

of Government should agree. The rule that Members of the Executive Council and Ministers should not oppose each other by speech or vote undermined the position of Ministers. The "sins" of the reserved department affected the Ministers as they were treated as common partners. It was not uncommon, especially in Bengal, that the new taxation proposals were introduced and enacted to meet the increasing expenditure of police and other reserved subjects. The Ministers shared the blame, and they were unable to resist such proposals for governmental needs. Responsibility mellowed the Ministers; unpopular Government measures prejudiced their position; inadequate revenues blocked the execution of any bold scheme of nation-building welfare. In this way, the dyarchical arrangement failed, partly for inherent reasons and partly because of the unfavourable atmosphere wherein the scheme had to be worked. The peculiar financial difficulties of Bengal under the Meston Award attracted attention from the start.

The success of provincial autonomy is intimately related to the quantum of revenues available for the provinces. The Government of India Act of 1919 started with the settlement made by the Meston Committee. The basis of the Meston Settlement which was that "the Government of India are to give and the Provinces must receive" gave no fair play to the principle of self-government in the provinces. The Meston Settlement had three serious defects viz., (1) although the provinces had expanding needs the sources of revenue assigned to them were insufficient and inelastic; (2) it treated the provinces unequally; (3) it gave practically no power to the provinces to tax industrial activities. This defective settlement was responsible, to a great extent, for the failure of the working of the Constitution envisaged in the Act of 1919. Mr. W. T. Layton, the financial assessor of the Simon Commission 1929, found from an analysis of the chief features of the financial situation in India that (a) the mass of the people were extremely

poor, (b) India was incurring expenditure on the primary functions of government, such as defence and maintenance of law and order, as high in proportion to her wealth as Western nations; (c) her expenditure on social services was far behind Western standards. But the possibility of further taxation was not ruled out by Mr. Layton.

Mr. Layton emphasised that the system of distribution of revenues must enable a province to benefit from its own economic development and from the enlargement of its own tax-producing capacity, but he did not fail to point out that haphazard geographical distribution of the provinces made it inequitable to distribute all centrally collected taxes on the basis of the province from which they came, and that the distribution must to some extent accord with the needs of the various provinces, the complete scheme being distribution according to origin and according to population.

The framers of the Government of India Act 1935 were confronted with the problem of the distribution of revenues, as the facade of provincial autonomy can have a stable basis on the satisfactory allocation of resources in a federal system. The assessment of relative financial needs of the Centre and of provinces collectively is a difficult task, but the adjudication of rival claims of the provinces is still more difficult. Soon after the Act of 1935 was passed, Sir Otto Niemeyer was appointed as an expert to investigate and make recommendations for completion by Order in Council of the scheme of financial relations between the Centre and provinces embodied in the Government of India Act 1935 and for other adjustments ancillary to that scheme. The matters remaining to be determined by Order in Council were the allocation between the Centre and provinces of the proceeds of income-tax and jute export duty and prescription of grants-in-aid of revenues of such provinces as were found to require assistance in this form. The inquiry was related to the necessity of "equipping

the provinces with at least a sufficient minimum of resources at the outset and of providing them with further resources in future, for questions at once arise both of the ability of the Central Government to surrender a part of its present resources and of the manner in which the sums available should be distributed among the provinces." Section 138 (1) provides that taxes on income other than agricultural income shall be levied and collected by the Federation, but that (subject to surcharges for federal purposes) a percentage to be prescribed by His Majesty in Council of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of federal emoluments, shall be assigned to the provinces. Sub-section 2 of Section 138 empowers the Federation to retain out of the moneys assigned by sub-section 1 of the said Section such sum as may be prescribed by His Majesty in Council. The assignment of the proceeds of income-tax to the units producing it was necessitated by the fact that the provinces have to be provided with some sources of revenue which would keep them going with the increased expenditure consequent on the introduction of provincial autonomy and that the Indian States would not consent to have income-tax raised within their area from their own subjects. The needs of the Centre were also great, and they are to be prejudicially affected by the expenses in connection with the inauguration of federation, the financial adjustment with the States in terms of Section 147, and the separation of Burma entailing a loss of Rs. 3 crores per year. The recommendations of Sir Otto Niemeyer were incorporated in the Government of India (Distribution of Revenues) Order 1936. The scheme may be summarised thus:

(1) One-half of the net proceeds of income-tax (excluding Corporation tax) from provincial sources belongs to the provinces, and the sums shall be distributed as follows:

Madras	..	..	..	15 p.c.
Bombay	..	..	..	20 p.c.
Bengal	..	..	..	20 p.c.
The United Provinces	..	..	..	15 p.c.
The Punjab	..	..	..	8 p.c.
Bihar	..	..	..	10 p.c.
The Central Provinces	..	..	..	5 p.c.
Assam	..	..	..	2 p.c.
The N.W.F. Province	..	..	..	1 p.c.
Orissa	..	..	..	2 p.c.
Sind	..	..	..	2 p.c.
Total				100

(2) The enjoyment by the provinces of the 50 per cent share is postponed

(a) first for a period of five years from 1st April 1937 during which time the provinces get only such amount if any of the divisible net proceeds of the taxes on income which together with the contribution by the Railways exceeds the sum of Rs. 13 crores,

(b) next for a second period of five years during which there is a gradual and automatic reduction of the amount withheld by the Federation. At the end of 11 years from the starting of provincial autonomy the provinces will be in full possession of the moiety allotted to them under sub-section 1 of Section 138. But the operation of the automatic grant to the provinces can be delayed by the Governor-General in his discretion (*vide* proviso ii of sub-section 2 of Section 138).

(3) Section 140 (2) provides that one-half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall be assigned to the provinces in proportion to the respective amounts of jute grown therein. The Order in Council 1936 allocates 62½ p.c. of export duty on jute to the provinces growing jute in proportion

to their production. This benefits Bengal particularly, although Bihar, Assam and Orissa come under the benefits of the scheme.

(4) Section 142 provides for grants from the federal Centre to the revenues of such provinces as His Majesty may determine to be in need of assistance. The Order in Council 1936 assigns the following grants.

A. *Permanent.*

1. N.W.F. Province—Rs. 100 lakhs a year.

2. Orissa—Rs. 47 lakhs in the first year.

Rs. 43 lakhs in each of the next four succeeding years.

Rs. 40 lakhs per year subsequently.

3. Assam—Rs. 30 lakhs a year.

B. *Temporary.*

1. The United Provinces—Rs. 25 lakhs a year up to 1942 only.

2. Sind—Rs. 110 lakhs in the year 1937-38.

Rs. 105 lakhs a year in the years 1938-39 to 1947-48.

Rs. 80 lakhs a year in the years 1948-49 to 1968-69.

Rs. 65 lakhs a year in the years 1969-70 to 1974-75.

Rs. 60 lakhs a year in the years 1975-76 to 1980-81.

Rs. 55 lakhs a year in the years 1981-82 to 1986-87.

(Sind is to get aid for 50 years).

The aid from federal revenues in the case of all the provinces concerned (except the N.W.F. Province) cannot be increased without the consent of both Chambers of the federal legislature. The governing intention was that the aided provinces should develop their own resources.

Complete fiscal autonomy for the provinces is not contemplated in the Act of 1935. The Niemeyer award undoubtedly improved the position of the provinces suffering under the weight of the Meston settlement. It has helped the working of provincial autonomy, although the situation is still far from satisfactory inasmuch as the provinces are left with the inelastic sources of revenue. The Provincial Finance Ministers' Conference which was held

at Bombay in June 1937 found that the Central Government had fruitful sources of revenue and that there were three possibilities for the province, *viz.*, retrenchment, borrowing, and new taxation. A popular Ministry hesitates to retrench and tax, but borrowing for unproductive purposes is unsound. New taxation is, however, inevitable, and there have been taxes on sale of goods, agricultural income and professions and employment in the provinces.

Section 150(1) lays down that no burden shall be imposed on the revenues of the Federation or the provinces except for the purposes of India or some part of India, but sub-section 2 thereof provides that the Federation or provinces may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the provincial legislature may make laws. Section 155 states that the Government of a province shall not be liable to federal taxes in respect of lands or buildings situated in British India or income accruing, arising or received in British India, but the Government of a province trading on business operations outside that province is not to be entitled to the exemption. "It is consistent with the general practice of federal constitutions to exempt the Governments of units from federal taxation, that being merely part of a reciprocal arrangement under which the Federal Government also is exempt from taxation by the several units." Accordingly, Sections 154 and 155 are to be taken as complementary to each other, and they provide for the mutual exemption of the property of the Federation and the units from taxation imposed by the other. As between the units themselves there is no mutual exemption from taxation. Sections 172 to 175 define the property which vests in the provinces and the Federation.

The executive authority of the province extends to borrowing upon the security of the revenues of the province within such limits as may from time to time be fixed by the Act of the provincial legislature. A province may not without the consent of the Federation borrow out-

side India, nor can it raise any loan without the like consent, if there is still outstanding any part of a loan made to the province by the Federation or by the Governor-General in Council or in respect of which a guarantee has been given by the Federation or by the Governor-General in Council. The consent of the Federation is not to be unreasonably withheld.

The East India Loans Act was passed giving effect to Sections 161 and 315 of the Act of 1935. This empowered the Secretary of State to borrow in sterling on behalf of the Government of India during the period between April 1, 1937 and the establishment of the Federation in India to make provision for the administration of any debt so created and to make similar provision for the future administration of the India sterling debt outstanding on April 1. It is necessary because the effect of Sections 161 and 315 of the Government of India Act is that the statutory borrowing power now vested in the Secretary of State in Council will expire on the 1st of April 1937, and that any India sterling borrowing between that date and the establishment of the Federation must be undertaken by the Secretary of State subject to the provision being made on that behalf by the East India Loans Act.

The Niemeyer award prescribes that during the second prescribed period of five years (that is, after five years of provincial autonomy) the Centre shall relinquish to the provinces by equal steps so much of the provincial share as it is retaining in the last year of the first period. But this scheme was altered as the Government of India (Distribution of Revenues) Order, 1936, was amended in 1940 to the following effect: (a) the Centre be permitted to retain a fixed share of Rs. 41½ crores annually for 3 years 1939-40 to 1941-42 out of the provincial moiety in addition to its own half of the divisible income-tax irrespective of the contribution by the Railways, (b) the Centre will retain, for the second period of five years, progressively reduced amounts from the basic sum of Rs. 41½ crores in 1941-42,

instead of a much smaller sum that would be retainable under the Order of 1936, read together with Section 138. Thus the losses to the provinces for the second period of five years will be huge, and the fixation of the retention by the Centre at Rs. 4½ crores out of the provincial share will deny full share of increased yield from the income-tax to the provinces. The provinces will also be denied any share in the prosperity of the Railway finances. This amendment was strongly resented by the Bengal legislature, and Mr. Nalini Ranjan Sarker who was Bengal's Finance Minister led the opposition to the amendments of the Niemeyer Award in the Bengal Legislative Assembly (March 1940) when he no longer sat on the treasury benches.

The following items of expenditure are charged on the revenues of the province:

1. The salaries and allowances of the Governor and the other expenditure relating to his office. (Provision for this is required to be made by Order in Council). Salaries, allowances and expenses of providing accommodation and facilities for the Governor's Secretarial staff. Any sum to give effect to the provisions of Third Schedule (re: Governors).

2. Debt charges for which the province is liable.

3. The salaries and allowances of Ministers and of the Advocate-General.

4. The salaries and allowances of Judges of any High Court.

5. Expenditure connected with the administration of any areas which are for the time being excluded areas.

6. Any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal.

7. Any expenditure declared by the Constitution Act of 1935 or any Act of the provincial legislature to be so charged.

8. Any payment heretofore made to any State by any local Government under any arrangements made with the State before the Act of 1935.

9. Expenses of any Court of commission or the pension payable to or in respect of a person serving the province.

10. Salary, allowances and pension of the Provincial Auditor-General.

11. Salaries and allowances of persons appointed to a civil service or a civil post by the Secretary of State or to other services in or before 1924 when they happen to serve the province. It includes the compensation ordered by the Secretary of State.

12. The expenses of the Provincial Public Service Commission except such pension as is charged on the revenues of the Federation.

13. Costs incurred by defendant public servants connected with the province in civil or criminal proceedings, so far as such costs are not recoverable from the plaintiff.

14. Costs incurred by and damages and costs awarded against public servants in civil suits if the Governor in his individual judgment so directs.

15. Salaries and allowances of members of the Revenue Appeal Tribunal constituted under Section 296.

16. Political and compassionate pensions.

It is significant to note that Sections 154 and 155 of the Act of 1935 contemplate that provincial Governments may engage in a trade or business; they may invest their revenues in trade or business outside and inside their borders. In *Lahore Electric Supply Company, Ltd. v. Secretary of State and others* (1 F.L.J. H.C. 155) the Lahore High Court has decided that the action of the Punjab Government in engaging in the business of the supply of electrical energy was not *ultra vires* under the Act of 1935. It is an improvement on the Act of 1919, so far as provincial powers are concerned.

The Distribution of Legislative Powers

The Constitution Act 1935, read together with the Seventh Schedule thereto, devises the following scheme in the matter of distribution of legislative powers:

(1) The Federal legislature has exclusive power over List I, concurrent power over List III, and no power over List II.

(2) The provincial legislatures have no power at all over List I, concurrent power over List III and exclusive power over List II.

It is to be noted that the concurrent powers of the provincial legislatures over List III and their exclusive powers over List II are to be subject to the powers of the Federal legislature over Lists I and III. Section 104 enacts that the Governor-General acting in his discretion may empower either the Federal legislature or a provincial legislature to enact a law with respect to any matter not enumerated in any of the three lists. Section 102 empowers the Federal legislature, on proclamation of emergency, to make laws for a province with respect to any of the matters enumerated in the Provincial Legislative List and also provides that such federal law shall prevail over any provisions of the provincial law that may be repugnant to it.

Section 100 makes it clear that if any matter falls within the Federal Legislative List, provincial legislation in respect thereof is altogether *ultra vires*. Section 107 provides that the provincial law will give way (to the extent of the repugnancy) only if it is repugnant to an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, unless the assent of the Governor-General or of His Majesty has been obtained. With respect to matters in the Provincial List, the provincial law is effective with the assent of the Governor. Section 107 (1) recognises that a law may be invalid to a limited extent on account of a conflict.

The onus of showing the repugnancy of provincial legislation lies on the party attacking its validity, and there is a presumption in favour of its validity. Repugnancy must exist in fact, and the Act should be liberally construed as to reconcile the apparent clash. If the invalid part of an Act can be separated in its operation from other parts

without frustrating the whole object of the Act, then only such part is invalid. It is quite possible that a Statute is *ultra vires* in respect of a subject which is beyond the power of the enacting legislature and *intra vires* in respect of a matter which is within its jurisdiction. But "if the offending provisions are so interwoven into the scheme of the Act that they are not severable, then the whole Act is invalid."

When a subject falls either in the Concurrent Legislative List or in the Provincial Legislative List, Section 100 makes the former the dominant list. But this principle cannot apply "where the result would be to rob the provincial entry of all its content." In Canada, Marriage and Divorce is in the federal list, the Solemnisation of Marriage in the province is in the provincial list. Under Section 91 of the British North America Act, the federal list is the dominant list. The federal list may be interpreted to swallow the provincial list, and in that case, the provincial list loses all its significance. But such an all embracing interpretation to reduce the provincial list to a cipher should be avoided. In the Indian Act, Civil Procedure is in the Concurrent Legislative List, but Jurisdiction and Powers of all courts except the Federal Court is in the provincial list. The Calcutta High Court in *Stewart v. Brojendra Kishore Roy Chowdhury* (2 F.L.J.H.C. 112), held that "civil procedure" in the Concurrent Legislative List must be held to exclude matters relating to jurisdiction and powers of courts.

Under the Indian Constitution Act, if the two sets of legislative lists are found to overlap, federal legislation is to prevail. The British North America Act contains analogous provisions. Section 91 of the Canadian Act invests the Dominion legislature with a general power to legislate for the peace, order and good government of Canada "in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces." Section 92 of the

Canadian Act gives the provincial legislatures exclusive authority to make laws in relation to matters coming within the list of provincial subjects enumerated in that section, the last class in the list being described as "generally all matters of a merely local or private nature in the Province." The rule of construction is that general language in the heads of Section 92 yields to particular expressions in Section 91, where the latter are unambiguous. The Chief Justice of the Federal Court of India holds that the said rule of construction laid down by the Judicial Committee in a long series of decisions for the interpretation of the two sections of the British North America Act may be accepted as a guide for the interpretation of similar provisions in the Government of India Act. On a strict interpretation, it may be held that there is no question of overlapping in the Indian Constitution Act when we find that if there is any subject in the Legislative List II which falls in List I or List III, it must be taken as cut out from List II, because the dominant position of the Central Legislature with regard to matters in List I and List III is recognised. But the words "with respect to" which signify "pith and substance" do not encourage any strict literal interpretation as incidental encroachment is permissible. There may be competency and yet repugnancy also. The provincial legislature cannot fundamentally affect a federal law. In Canada the solution of repugnancy exists mostly in judge-made law, but in the Indian Act the principle is embodied in Section 107.

In the Indian Constitution we find specific directions in the Instruments of Instructions to the Governor-General and Governors that certain categories of Bills, such as those vitally derogating from the powers of the High Court, altering the character of the Permanent Settlement, offending against provisions with respect to discrimination etc. are to be reserved ultimately for the pleasure of His Majesty in Council. But the validity of an Act passed by the competent legislatures and assented to by the Governor-General

or the Governor cannot be questioned on the ground that it was meant to be "reserved" under the Instrument of Instructions.

The true nature and character of legislation is to be looked at in determining if it is within the express powers of the federal or provincial legislature in a federal system. If on the view of the statute as a whole "the pith and substance of the legislation" falls within the allotted powers of a particular legislature, it is not to be invalidated on the ground of incidentally touching on matters outside the authorised field. The object of the legislator is not enough; if the clauses of the Act are passed in respect of forbidden matters, they are *ultra vires*.¹

The scheme of the British North America Act in Canada is different from that of the Government of India Act 1935. The Canadian Act exhausts the whole range of legislative power, but whatever was not given to the provincial legislatures rested with the Dominion Parliament. In view of Section 104, this cannot be said of the Government of India Act. In Canada, "the legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in Section 91, is of paramount authority, even though it trenches upon matters assigned to the Provincial Legislatures by Section 92", and "it is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the Provincial Legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation enumerated in Section 91." This principle cannot be applied to interpreting List III of the Seventh Schedule of the Constitution Act of 1935. The Canadian and Indian Acts are not in *pari materia*, although the residual power is left with the Central Government. In India powers are given to the legislatures both exclusively as well as

¹ *Gallagher v. Lynn*, House of Lords, July 19, 1937.

concurrently. The doctrine of the occupied field is found inserted in Section 107 of the Indian Act.

It is to be remembered that within their own sphere the powers of the Indian legislatures are as large and ample as those of Parliament itself. If any subject matter falls within the sphere of the legislature, it can be dealt with retrospectively or prospectively. Section 292 of the Constitution Act cannot subject the legislature to prohibition against retrospective legislation. The retrospective effect will be given only when it is expressly provided for. A provincial or Central legislature, when acting within its limits, is "not in any sense an agent or delegate of the Imperial Parliament", but it is intended to have plenary powers of legislation within its allotted sphere.

The subjects dealt with in three Legislative Lists (Schedule VII to the Constitution Act of 1935) are not defined with precision. The general word is amplified and explained by a number of illustrations: the list of illustrations is not exhaustive; it is indicative, and as such "none of the items in the Lists is to be read in a narrow or restricted sense, and each general word should be held to extend to all ancillary or subsidiary matters which can and reasonably be said to be comprehended in it".

With respect to any matter falling under the Concurrent List (List III) the assent of the Governor-General would be required under Section 107 (2) to validate an Act passed by a provincial legislature.

If the previous sanction of the Governor, required to be taken under Section 299 (3) of the Constitution Act (re: extinguishment or modification of rights in land) is not obtained, it is completely disposed of by Section 109 (2) in the event of assent being given to the enactment of a Bill.

If any provincial Act conflicts with any existing law, it can be void, under Section 107 (1) of the Constitution Act, only to the extent of their repugnancy to each other;

the former will be deemed to have been repealed or amended, "as the last expression of the will of the legislature must always prevail".

The following well known principles of interpretation are of great interest to students of constitutional law:—

- (a) A taxing Statute should be interpreted strictly.
- (b) Vested rights should not be presumed to be affected: therefore for Statutes taking away legal rights or altering the jurisdiction of the courts of law, express and unambiguous words are necessary.
- (c) The ousting of the jurisdiction of the Civil Court does not refer to the High Court, unless expressly mentioned.
- (d) No Act can be invalidated on the ground that it may possibly be abused.
- (e) The words "with respect to" are not necessarily the exact equivalent of "relating to" or "connected with"; remote relation or indirect connection would not establish that particular legislation is with respect to such subject.

It is a principle, enunciated by the Judicial Committee of the Privy Council, that a broad interpretation should be given to the express power at the expense of the unspecified residuary power. The express power given in the provincial legislative list should be endowed with the utmost liberal interpretation. But if there is a general power on any subject given to the Centre, and if it is limited by an express power on the subject in the provincial list, the rule of interpretation should not permit the extension of the meaning of the term in the Central list at the expense of the provincial list. In the Indian Act, the Federal legislature has power to impose duties of excise and the provincial legislature an exclusive power to impose

taxes on the sale of goods. To be an excise the tax must be levied on goods. In a loose sense, every tax on the sale of goods produced in India is an excise duty, although an excise duty is not necessarily a tax on sales. The expression "duty of excise" is to be given a restricted meaning. The Federal Court delivered an advisory opinion on a reference by the Governor-General under Section 213 in respect of the question whether the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act 1938 imposing a tax on the retail sale of petrol was within the competence of the Central Provinces legislature. They were of the opinion that the power of the Central Legislature to impose duties of excise (List I, Entry No. 45) was a power to impose duties on the manufacturer or producer of the goods and did not extend further the power to impose a tax upon the sale of goods after manufacture or production in terms of List II, Entry No. 48. The Central Provinces legislature was found competent to impose a tax on retail sales of petrol. They left open the question if the tax upon the first sale of goods manufactured or produced in the province was to be regarded as falling within the provincial list. In *the Province of Madras v. Boddu Paidanna & Sons*, May 8, 1942 (5 F.L.J. 61), the Federal Court held in connection with the Madras Sales Tax Act of 1939 that the power of the provincial legislatures to levy a tax on the sale of goods extended to sales of every kind, whether first sales or not, and differed from the opinion of the Madras High Court which held that the provincial legislature in India had no power to tax a sale by the manufacturer or producer. It is true that a tax on the first sale is a tax on the sale by the manufacturer or producer who will be doubly hit by the sales tax and the excise duty. But there is no way out of this difficulty as the sales tax is levied upon the producer as seller and not as producer. The two taxes are economically separate and distinct imposts.

The authority of the provincial legislature in respect of matters specified in the provincial Legislative List is indeed

great. The list of illustrations must not be taken to be exhaustive. The U.P. Regularisation of Remissions Act of 1938 went beyond the subject of remission of rents. In pith and substance it was an Act not only with respect to the relation of landlord and tenant or the collection of rents but also with respect to the conferring on the provincial Government of extensive powers of interference with the legal rights of landholders in their lands. But it was an Act with respect to matters covered by item No. 21 of List II which was within the exclusive authority of the provincial legislature, and as such it was not void. The Federal Court definitely held that the items in the legislative lists should be held to extend to all subsidiary matters which could be fairly and reasonably said to be comprehended in them and to both substantive and procedural laws with respect to the matters specified. The judgment of the Federal Court in *the United Provinces v. Mst. Atiqa Begum and others*, dated December 6, 1940 (3 F.L.J. 97) clearly lays down that liberal interpretation must be given to invest the provincial legislature with full power to legislate with respect to the items in the provincial list.

The extent of the authority of the provincial legislature is so great that a provincial law could not be impugned if it affects civil rights outside the province only collaterally as a necessary incident to its lawful powers of good government within the province¹.

The Bombay High Court held that the urban immovable property tax at 10 p.c. of the annual letting value of such buildings or lands and the tax levied and paid at the rate of 5 p.c. of the annual letting value in the city of Bombay on the lands and buildings the annual value of which would not exceed Rs. 2,000, as provided for in the Bombay Finance Act 1939, was a tax on lands and buildings within item 42 of the Provincial Legislative List and was not a tax on income falling within item 54 or a tax on the

¹ Privy Council Judgment in *Ladore v. Bennett*, May 8, 1939 (a Canadian appeal).

capital value of assets falling within item 55 of the Federal Legislative List.¹

Special Legislative Powers

Section 88 provides for the issue of ordinance when the legislature is not in session. Under Section 89, the Governor can promulgate an ordinance if he is satisfied that circumstances render it necessary for him to do so for the discharge of his functions. Under Section 90 the Governor has full powers necessary to deal with every contingency and can enact, as a Governor's Act, the Bill proposed by him to the legislature. The validity of the ordinance is not to be determined by the evidence adduced before the Court; it is immaterial if there was a valid case for the issuing of the ordinance. It is for the Governor to decide if the circumstances justify any ordinance. All these sections relate to the legislative powers of Governors, and section 54 states that the Governor shall be under the general control of the Governor-General in regard to matters in which he is directed to act in his discretion or in his individual judgment. The responsibility to the Governor-General is immediate, whereas the ultimate responsibility is to Parliament through the Secretary of State for India under Section 14. All this involves infringement of provincial autonomy. Under the Government of India Act 1919, it was the Governor-General who had the power of promulgating ordinances; the provincial Governors had no such power. The Act of 1935 introduces provincial autonomy and authorised the Governor to behave as an independent delegate of the Crown. The provinces derive their powers directly from the Sovereign, and the provincial

¹ Justice Kania observed:—"If the land and buildings are treated as investments and the return, as income, is taxed it is a tax on the income. On the other hand, if the tax is on the lands and buildings themselves and the assessment is on a standard named by the legislature which may fluctuate or vary on the produce or income from it, it would be a tax on the property. (*Sir Byramji Jeejeebhoy v. the Province of Bombay*, Bombay High Court, September 27, 1939).

Governors are appointed by His Majesty without consultation with the Governor-General. The Centre and the provinces are now rendered co-ordinate Governments. Section 122 lays down an obligation that the executive authority of every province shall be so exercised as to secure respect for the laws of the Federal legislature which apply in that province. Under Section 123, the Governor-General may direct the Governor of any province to discharge as his agent such functions in and in relation to tribal areas as may be specified and also in relation to defence, external affairs and ecclesiastical affairs as may be specified. The Governor can overrule his Ministers if their action tends to impede or prejudice his action in the reserved sphere. In discharging such agency functions, the Governor is to act in his discretion.

The provincial legislature may make laws for the province or for any part thereof. Section 102 authorises the Federal legislature, in the event of a proclamation of emergency by the Governor-General, to invade the subjects in the provincial field by legislation. The extent of the Governor-General's legislative power is co-extensive with that of the Federal legislature. The restrictions on the power of the Federal legislature are found in the proviso to sub-section 1 of Section 102. Under Section 102 (5), as provided for in the Government of India (Amendment) Act 1939, the Governor-General may proclaim a state of emergency if he in his discretion is satisfied that there is imminent danger of war or internal disturbance. It is to be noted that discretion in public affairs is seldom absolute; it must be used judiciously, not in a capricious and impetuous way. Section 126 of the Act of 1935 deals with the exercise of the executive power of the Federation in the provinces. Normally, the Federal Government, in its exclusive field of subjects, has power to give detailed directions to a provincial Government. The Amending Act of 1939 widens the executive authority of the Central Government when a proclamation of emergency is in

operation. A new section 126A is inserted whereunder the executive authority of the Federation shall extend to the giving of direction to a province as to the manner in which the executive authority thereof is to be exercised. It is also provided that "any power of the Federal Legislature to make laws for a Province with respect to any matter shall include power to make laws as respects a Province conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Federation or officers and authorities of the Federation as respects that matter, notwithstanding that it is one with respect to which the Provincial legislature also has power to make laws". This power is to be exercised with an eye to proper provision for emergency.

Under Section 102 a proclamation was issued by the Governor-General on the 3rd of September 1939 on the outbreak of war between Great Britain and Germany. India was declared a belligerent on behalf of Great Britain without reference to the Central legislature. On the 29th of September 1939 the Defence of India Act was enacted. Before that date, the Defence of India Ordinance 1939 was promulgated by the Governor-General under Section 72 of the Act of 1919 which was kept continuing under Section 317 and the Ninth Schedule of the Act of 1935.

The Defence of India Act 1939 provides that the Central Government may make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order, or the efficient prosecution of war. The Central legislature practically divested itself of its legislative authority, but it acted within its limits. The Central Government is armed with a new legislative power to invade provincial autonomy where it hampers the execution of the Defence of India Act.

The Federal Court in *Keshav Talpade v. King Emperor* (6 F.L.J. 28) held that paragraph (x) of sub-section (2) of

Section 2 of the Defence of India Act 1935 was *intra vires* the Central legislature inasmuch as Entry No. 1 of List I of the Seventh Schedule of the Constitution Act 1935 gave the Central legislature power to legislate with respect to preventive detention in British India for reasons of State connected with defence and certain other specified matters; that Rule 26 of the Defence of India Rules 1939 went beyond the rule-making powers which the legislature had thought fit to confer upon the Central Government and was for that reason invalid; and that as Rule 26 was invalid, the order under it was a nullity.

Section 2 (1) of the Defence of India Act 1939 provides that "the Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community." Sub-section (2) provides that "without prejudice to the generality of the powers conferred by sub-section (1) the rules may provide for, or may empower any authority to make order providing for, all or any of the following matters." Paragraph (x) of this sub-section was in the following terms: "the apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or being about to act, in a matter prejudicial to the public safety or interest or to the defence of British India, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do, or abstain from doing, anything." Under Rule 26 it is enough that the Central or the Provincial Government "is satisfied with respect to any particular person that his detention is necessary with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty's relations with foreign

powers or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war." Nothing is said in Rule 26 about suspicions, reasonable or otherwise, that the person concerned has acted, is acting, or is about to act in a prejudicial manner. Accordingly, the Federal Court held that "Rule 26 in its present form goes beyond the rule making powers which the legislature has thought fit to confer upon the Central Government and is for that reason invalid." A large number of people were detained under Rule 26, and the divergence between Rule 26 and paragraph (x) of Section 2 (2) of the Defence of India Act 1939 led to the filing of a number of *habeas corpus* applications in the different provinces in respect of persons detained under Rule 26. Mr. Amery stated in the House of Commons that the technical irregularity pointed out by the Federal Court could be righted by the Governor-General. In exercise of the powers conferred by Section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act 1935, the Governor-General promulgated the Defence of India (Amendment) Ordinance 1943 seeking to validate Rule 26 of the Defence of India Rules and to enact that "no order heretofore made against any person under Rule 26 of the Defence of India Rules shall be deemed to be invalid or shall be called in question on the ground merely that the said rule purported to confer powers in exercise of the powers that might at the time the said rule was made be lawfully conferred by a rule made or deemed to have been made under Section 2 of the Defence of India Act 1939."

The Special Bench of the Calcutta High Court (composed of Mr. Justice R. C. Mitter, Mr. Justice A. N. Sen and Mr. Justice Khundkar) in connection with the *habeas corpus* applications contesting detention under Rule 26 held (Mr. Justice Khundkar dissenting) that the new ordinance promulgated by the Governor-General validating Rule 26 of the Defence of India Rules was *ultra vires* the

ordinance making powers of the Governor-General, as in their opinion the Governor-General by an Ordinance under Section 72 of the Government of India Act could not directly amend an Act of the Central legislature. The detention of the petitioners was held illegal inasmuch as Ordinance 14 of 1943 was *ultra vires* the powers of the Governor-General and also improper inasmuch as the orders of detention were not made in accordance with the provision of Rule 26 of the Defence of India Rules. The judgment was delivered on the 3rd of June 1943. The petitioners were released, although they were arrested again under Regulation III of 1818. The Judges laid emphasis on the ideal set forth by Lord Atkin: "In accordance with British Jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on condition that he can support the legality of his action before a Court of Justice and it is the tradition of British Justice that Judges should not shrink from deciding such issues in the face of the executive."

It is to be noted, in this context, that emergency legislation in England is parliamentary legislation or Order in Council passed under the authority of the parliamentary Statute, and it is always subject to parliamentary control including in the last resort the right to insist on the annulment or modification of the Order in Council or even the repeal or modification of the Statute itself. Under the Indian Constitution the legislature has no share in or control over the making of an ordinance or the exercise of powers thereunder, nor has it any voice in making for its repeal or modification (Section 72 of the Ninth Schedule of the Government of India Act 1935). Even under these limitations the Judiciary in India was careful to prevent "serious excess in the use of special emergency powers." The Federal Court by a majority of two judges, *viz.*, Sir Varadachariar (Acting Chief Justice) and Sir M. Zafrullah (Mr. Justice Rowland dissenting) dismissed on

the 4th June 1943 the Bengal Government's appeal against the Calcutta High Court's judgment declaring certain provisions of the Special Criminal Courts Ordinance 1942 *ultra vires*. The Federal Court held: "We are of the opinion that Sections 5, 10 and 16 of the ordinance are open to objection as having left the exercise of the power thereby conferred on executive officers to their absolute and unrestricted discretion without any legislative provision or direction laying down the policy or conditions with reference to which that power is to be exercised." The ordinance-making authority in the Special Criminal Courts Ordinance 1942 evaded the responsibility of laying down any rules or conditions or even enunciating the policy with reference to which cases are to be assigned to the ordinary criminal courts and to the Special Courts respectively and left the whole matter to the unguided and uncontrolled action of the executive authorities. The Federal Court and the Calcutta High Court took serious objection to this. It was staggering to find that the Special Criminal Courts Ordinance was not restricted in its application to offences connected with the state of emergency on account of which the Ordinance was promulgated and that it was for the executive authorities to consider and decide what offences should be tried under it. In June 1943 the Special Criminal Courts Ordinance 1942 was repealed by a new Ordinance which provided that the sentences passed under the old Ordinance should be deemed to have been passed by regular courts under the Criminal Procedure Code and subject to the rights of appeal conferred by the Code and that pending cases under the Special Courts Ordinance should be transferred to ordinary courts. The new Ordinance gives indemnity in respect of all action taken under the old Ordinance.

The India and Burma (Emergency Provisions) Act 1940 makes the Governor-General the supreme authority during the period of emergency. The Act provides that (1) any power of appointment to, or removal from, any

office in India being a power which would be exercisable by His Majesty shall be exercisable also by the Governor-General; (2) any provision which under the Act of 1935 could be made by an Order in Council or by rules made by, or with the sanction of, the Secretary of State may be made also by the Governor-General by notification in the Gazette of India; and (3) the words "for the space of not more than six months from its promulgation" as regards ordinance under Section 72 of the Government of India Act 1919 (which is set out in the Ninth Schedule of the Act of 1935) were omitted. The Governor-General will exercise these new functions in his discretion to deal with the emergent situation in which the country is placed.

Thus the powers of the Governor-General have been so broadened that on the plea of proper discharge of his function to meet the emergency conditions in the country, provincial autonomy can be, and has been, to a large extent reduced to a farce. This emphasises the organic unity of India for defence and other considerations when the security of India is threatened. The Defence of India Rules made under the Defence of India Act 1939 make serious encroachments on provincial autonomy, and all this is justified on the plea of emergency conditions obtaining in the country. Rule 34 (6) of the Defence of India Rules forbids acts which bring into hatred or contempt or excite disaffection towards His Majesty or the Crown Representative or the Government established by law in British India or any other part of His Majesty's dominions or are likely to influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of British India or the efficient prosecution of war. The Federal Court (in *Niharendu Dutt Majumder v. King Emperor*, 1942, 5 F.L.J. 47) laid down that such rules are not to be read in a literal sense and that they should take a broad view as "criticism of an existing system of Government is not excluded, nor even the expression of a

desire for a different system altogether." In the opinion of the Federal Court, "the law relating to the offence of sedition as defined in the Code is equally applicable to the prejudicial act defined in the Defence of India Rules".

Rules of Construction

Under Section 46 (2) of the Constitution Act of 1935, Burma ceased to be part of India. Accordingly, a British Indian Court cannot affect properties situated in Burma. It is an interesting question of constitutional law whether the separation of Burma will affect pending suits in a British Indian Court on the ground of want of jurisdiction. It will not, as "once the Court has seizin of the case, it has jurisdiction to try to its conclusion, unless there is any reason for holding that that jurisdiction has been removed". Statutes relating to both substantive and adjective law will not be given retrospective operation unless there is an express provision to that effect. It is also a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. Courts, unless compelled by the language of the Statute, do not apply a new Act to a pending action. Section 292 continues the existing law, although it does not validate any law; section 293 deals with the continuance of existing Indian laws, subject to the power of His Majesty in Council to make necessary adaptations and modifications.

It is to be noted particularly that the general rules of construction in the Interpretation Act 1889 will govern the construction of the Act of 1935. In a federal constitution, it is essential that the function of a court of law is not only to ascertain the actual meaning of the words used in the Statute but to draw conclusions which are in the spirit though not within the letter of the text. Nothing is to be read into the Statute on grounds of policy. But "a Constitution

must not be construed in any narrow or pedantic sense", and "the construction most beneficial to the widest possible amplitude of the powers of the legislature must be adopted." The legislature cannot add to its own powers, nor can it declare the meaning of the Constitution. Acquiescence for no length of time can legalise a usurpation of power. The rule of progressive interpretation which is applicable to a Constitution Act, designed to serve a permanent end, can be given only by a court of law, and the extent and ambit of the legislature may grow with the progress of history, aided by courts of law. It will, therefore, be instructive to read the ambit of the provincial legislatures from the decisions of courts of law, and it is found that both legislature and courts of law are extremely vigilant to exploit the Constitution Act for the utmost extension of provincial autonomy. The Speakers and Presidents of the provincial legislatures act as custodians of their rights and privileges. The President of the Bengal Legislative Council gave a ruling during the discussion of the Bengal Money-Lenders' Bill 1939 that "when I am not free from doubts in my mind I should not hold that the matter is outside the scope of the Provincial Legislature."¹ But there is a general presumption that a legislature does not intend to exceed its jurisdiction. It was held by the Federal Court in a very important reference under Section 213 of the Act of 1935 that the Hindu Women's Rights to Property Act 1937 and the Hindu Women's Rights to Property (Amendment) Act 1938 passed by the Central

¹ Khan Bahadur Azizul Huque, Speaker of the Bengal Legislative Assembly, was also very careful to extend the rights and powers of the provincial legislature, and he gave a significant ruling in the Bengal Legislative Assembly, April 1939, regarding the Bengal Money-Lenders' Bill: "Money-lending being in the exclusive provincial list, whoever does money-lending, bank, corporation or person, must come within the scope of provincial legislation. Even though bank and corporation come within federal subjects, it means money-lending functions of those institutions come within the competency of the provincial legislature. If Promissory Notes come within the Federal list, it means all other matters except the element of money-lending are federal while money-lending comes within the provinces."

legislature would not regulate succession to agricultural land in the Governors' provinces (entry No. 21 in the provincial legislative list), but they would regulate devolution by survivorship of property other than agricultural land (entry No. 7 of the concurrent legislative list).

It is accepted that where a Statute is ambiguous, the presumption that a legislature does not intend to interfere with vested rights is reinforced by the absence of provision for compensation, but where the language is clear and there is no ambiguity, there is no room for argument based on the absence of a provision for compensation.¹ Under the Indian Act, no person shall be deprived of his property in British India save by the authority of law. It is only in the case of compulsory acquisition for public purposes of any land or any commercial or industrial undertaking that the question of compensation arises (*vide* Section 299). But if vested rights are invaded without making for acquisition for public purposes, such legislation cannot be held invalid on the ground of providing no compensation if the legislature are otherwise competent to do so. The legislature can enact particular purposes as public or clothe the Executive with authority so to notify as to be binding on the courts. It is a matter for the legislature to decide what is just compensation.

It is to be noted that in the Indian Act there is no provision for full or fair compensation. The legislature aided by the Governor can prejudice vested rights to so extraordinary a degree as to nullify the spirit of the basic provision that a person can not be deprived of his property in India save by operation of law. The rule of construction, applied to the Indian Constitution Act 1935, is not helpful for the property-owning community. If property-holders are deprived of lawful rights with inadequate compensation, they have hardly any legal relief under the Act; they are at the mercy of the Governor or of

¹ *Bhola Prasad v. the King Emperor*, Federal Court, March 4, 1942 (5 F.L.J. 17).

His Majesty to disallow any Act assented to by the Governor or the Governor-General within twelve months from the date of the assent.

The Federal Court held in *Thakur Jagannath Baksh Singh v. the United Provinces* (1943, 6 F.L.J. 55) that although some of the provisions of the U.P. Tenancy Act 1939 had cut down the absolute rights claimed by the talukdars of Oudh and Agra to be comprised in the grant of their estates as evidenced by *sanads* granted by the British Government in 1859, the Act was within the competence of the legislature of the United Provinces to enact. The provisions of the Act fell within entry No. 21 of the Provincial Legislative List.

Ambit of the Provincial Legislature

A few decisions of the courts of law on some of the new provincial Acts are given to show the extent of the power of the provincial legislature and the trends of legislation. It is an interesting study as they show that the provincial legislatures under the Reforms Act of 1935 have sought to widen their power and exercise their authority at the expense of the stake-holders in favour of the new electors, principally the lower middle classes, who have become the ultimate masters of the legislators. Some of the provincial measures prejudicially affected the given basis of class relations, and there was a swing of public opinion in the advancement of the cause of the *petite bourgeoisie*. Money-lenders and landlords were generally hit most. The provincial legislatures struck them low, but could not provide a happy alternative; they froze credit but could not create new wealth; they transferred more rights in land to the ryots but did not devise any better nursing of land. The results achieved were demonstrative and spectacular but not helpful to the regeneration of decaying rural economy. Party politics and electoral prospects swayed the legislators in making promises

and redeeming them; there was not a diligent search for recovery of the malaise afflicting the country.

The Bihar Agricultural Income Tax Act of 1938 was tested before the Federal Court with regard to its validity. Act VII of 1938 was found to be *intra vires* the Bihar legislature, and it did not modify or affect Regulation I of 1793. The Court further directed that the provincial legislature was entitled to impose a tax on some categories of agricultural income. Accordingly, it does not affect the validity of legislation if some categories of agricultural income are excluded from the operations of any Agricultural Income Tax Act. This gives room for favoured treatment. The Patna High Court¹ held that the Bihar Agricultural Income Tax Act was *ultra vires* in so far as it purported to tax income from revenue-free estates in a municipality, as such income cannot be held to be agricultural income under the definition given in the Income Tax Act.

The Permanent Settlement Regulation I of 1793 was an Indian law enacted like any other Indian law by the legislative machinery then in operation in India. It was enacted by the Governor-General in Council who had the requisite authority to "make and issue rules, ordinances and regulations for the good order and civil government of the Company's settlement at Fort William and other factories and places subordinate or to be subordinate thereto." It was not an Act of Parliament, as the expression Act of Parliament has been used in Section 108 (2) (a) of the Constitution Act in the sense of enactments actually passed by Parliament and not of laws passed by a subordinate legislative body under authority conferred upon it by an Act of Parliament. This decision was recorded by the Federal Court in *Hulas Narain Singh and others v. the Province of Behar*, February 23, 1942. The Federal Court in *Hulas Narain Singh and others v. Deen Mohammad*

¹ Jhalak Prasad Singh v. Province of Bihar, (1941, 4 F.L.J.H.C. 178).

Mian and others (6 F.L.J. 68) held that Section 178-B of the Bihar Tenancy Act 1937 (which forbade the claiming of rent at a rate higher than nine-twentieths of the produce) was validly enacted and that it did not contravene Section 299 (2) or Regulation 1 of 1793.

The Bihar Money-Lenders' Act of 1938 was passed with the assent of the Governor of the province only. The Patna High Court held Sections 11 and 16 of the Act void under Section 107 of the Constitution Act. These sections were re-enacted, with retrospective effect, in the Bihar Money-Lenders' Act of 1939 which was passed in conformity with the procedure prescribed in Section 107 of the Constitution Act. Section 11 of the Act of 1938 was found to be repugnant to the provisions of the Usury Laws Repeal Act 1855 and Usurious Loans Act 1918; Section 16 read with Section 17 was found to be repugnant to the proviso which the High Court had added to Order XXI, Rule 66, of the Civil Procedure Code. The assent of the Governor-General validated those sections which were repugnant to existing Indian laws. The Federal Court in *Surendra Prasad Narain Singh v. Gujardhar Prasad Sahu Trust Estate and others* (3 F.L.J. 27) held that the appellant was entitled in his appeal before the Federal Court to the benefit of the Act of 1939, even though it was passed only after the decision of the Patna High Court.

An interesting law point touching on the right of the provincial legislature came up before the Patna High Court, whether the Bihar Money-Lenders' Act of 1939 was an enactment which trespassed upon an enactment connected with item No. 38 of Schedule VII of List I, that is, banking. It was contended that the Money-Lenders' Act had no application to banking transactions. The Patna High Court¹ held that (1) the legislation contemplated by item 38 of List I (Banking) is of the type which is to be found in the Imperial Bank of India Act 1920, or the Reserve Bank

¹ *Debabrata Banerjee v. Bank of Bihar, Ltd.*, (1941, 4 F.L.J. H.C. 153).

of India Act 1934, which deal with the establishment of the bank, the nature of the business carried on by the bank and the way in which a bank can be wound up; (2) Section 13 of the Bihar Money-Lenders' Act 1939 did not legislate either directly or indirectly with regard to the "conduct of banking business by corporations, etc.," and it could not be, therefore, said to have trespassed upon the rights of the Central legislature, and (3) money-lending is only a part of the business of the bank, and, therefore any legislation with regard to money-lending could not be said to be an enactment in connection with the conduct of banking business.

The Government of Bihar issued a notification under the Bihar and Orissa Excise Act of 1915 prohibiting the possession of country liquor and certain drugs in certain areas. The Patna High Court held the notification invalid and laid stress on the fact that the Act of 1915 was an Excise Act, designed mainly for the benefit of provincial revenue, and not for introducing the policy of prohibition. As a consequence of the decision of the Patna High Court, the Governor of Bihar enacted a Governor's Act entitled the Bihar Excise Amendment Act 1940 which validated the said notification. The Federal Court enunciated that "there is no reason in theory or principle why an Excise Act should not have a double object, the benefit of the revenue and the improvement of public health or morals by a greater control of the liquor trade." It did not endorse the finding for total prohibition. The power to legislate with respect to "intoxicating liquors and narcotic drugs", given in entry No. 31 of the provincial legislative list, includes the power to prohibit intoxicating liquors, but a power "to regulate" may imply the continued existence of the thing to be regulated.

In July 1939 the Government of Bombay issued a notification under sub-section 2 of Section 14-B of the Bombay Abkari Act of 1878 prohibiting the possession by any person of any intoxicant specified in the Schedule in excess

of a specified quantity without a permit or licence. The Bombay High Court in April 1940 held that the said notification was *ultra vires*. The provincial legislature has power to prohibit possession, provided that in so doing it does not encroach upon the powers of the Centre under item 19 of the federal legislative list to legislate in respect of import and export across customs frontiers. Absolute prohibition of possession destroys, though indirectly none the less effectively, the right to import and export intoxicants across the sea frontier of Bombay. Section 14-B (2) of the Act of 1878 was amended by the Bombay Act VI of 1940 to enable prohibition to be extended to the public.

The Bengal Money-Lenders' Act 1940 was an Act of the Bengal legislature, but it was enacted with the assent of the Governor-General. The Act disturbed vested rights violently, as it gave the Courts power in certain cases to re-open transactions and to set aside decrees passed before the Act came into operation. The Calcutta High Court¹ held that the subject matter of the Act came within item 27 of List II in Schedule VII of the Government of India Act and that although a decree was "property" within the meaning of Section 299 of the Constitution Act, the provincial legislature had power to interfere with it by legislation with retrospective effect. There is restriction on the power of the provincial legislature if it clashes with item 28 or item 53 of the Federal list. There is no restriction on the power of the provincial legislature to make laws as to money-lending and money-lenders, and where plenary powers of the legislature exist as to particular subjects, they may be exercised absolutely or conditionally; they may also be used in an injurious manner.

The Punjab Alienation of Land (Second Amendment) Act 1938 was a very drastic measure, and its principal

¹ *Promode Kumar Roy and another v. Benoy Krishna Chakravarty*, March 5, 1941; and *Harsukdas Balkissendas v. Dharendra Nath Roy and others*, March 11, 1941.

provision which is numbered 13A of the principal Act of 1900 is this: "When a sale, exchange, gift, will, mortgage, lease of farm purports to be made either before or after the commencement of the Punjab Alienation of Land (Second Amendment) Act 1938 by a member of an agricultural tribe to a member of the same agricultural tribe or of a tribe in the same group, but if the effect of the transaction is to pass the beneficial interest to a person who is not a member of the same tribe or of a tribe in the same group, the transaction shall be void for all purposes, and the alienor shall be entitled to possession of the land so alienated, notwithstanding the fact that he may have himself intended to evade the provisions of this Act". The Act provides for a limited measure of compensation for the value of improvements effected by a *bona fide* transferee for value, but it makes no provision for refund or reimbursement either in favour of the ostensible alienee or of the beneficiary or even *bona fide* transferees for value from them and not even in cases where the transaction thus avoided has been completed many years before the enactment of the measure. Section 13-A of the Act was held to be discriminatory, and the judgments of the High Court and the Federal Court showed that Section 298 (1) could operate as a bar to the wild exercise of the powers of the provincial legislature.

There was a very important judgment by the Lahore High Court¹ which held that (1) the Punjab Alienation of Land (Second Amendment) Act (X of 1938) was not *ultra vires* on the ground that it offended against Section 292 of the Constitution Act, (2) the said Act would be invalid as offending against the provision of Section 298 (1), as

¹ *Punjab Province v. Daulat Singh*, (1941, 4 F.L.J.H.C. 83). The High Court directed that "Agricultural land" must, in the absence of any indication to the contrary in the Government of India Act, be taken in its normal meaning. It is obviously land actually used for agriculture or for purposes subservient to agriculture. It does not include pastoral land or other rights in land which are included in the definition of land in the Punjab Alienation of Land Act. In the Constitution Act land comprises both corporeal and incorporeal rights and interests.

its pith and substance was to penalise certain transactions resulting in the acquiring of a beneficial interest in land by certain persons on the ground of descent alone; (3) the Act was *intra vires* qua sales or mortgages of agricultural land effected by agriculturists in favour of agriculturists who are benamidars for non-agriculturists after the commencement of Act X of 1938; and (4) Section 298 (2) saves only sale or mortgage of agricultural land, and it does not save other kinds of alienations. In the opinion of the majority of the Federal Court (*The Punjab Province v. Daulat Singh and others*, 4 F.L.J. 73), Section 13-A of the Act is clearly discriminatory, and a prohibition against a person acquiring or holding property as a beneficiary offends Section 298 (1) of the Constitution Act quite as much as a prohibition against his obtaining a transfer of the legal title. Under the Act of 1900 he cannot acquire a legal interest permanently, and under the Act of 1938 he cannot acquire a beneficial interest either. Sub-section 2 of Section 298 purports to save the operation of any law which prohibits the sale or mortgage of agricultural land etc., but Act X of 1938 not merely prohibits such transactions being entered into after the date of the Act, but vacates or nullifies even titles or rights acquired before the passing of the Act. "Prohibit" in Section 298 (2) does mean the forbidding of a transaction. Mr. Justice Beaumont of the Federal Court delivering a minority judgment held that Section 13A of the Act is not *ultra vires* and he observed as follows: "If the only basis of the Act is discrimination on one or more of the grounds specified in Section 298 (1), then the Act is bad; but if the true basis of the Act is something different, the Act is not invalidated because one of its effects may be to invoke such discrimination". In his opinion, the true object of the Act of 1938 was to avoid a method of evading the principal Act of 1900 which itself is unobjectionable. The Punjab Restitution of Mortgaged Lands Act (IV of 1938) was found by both High Court and Federal Court

intra vires the provincial legislature as the subject matter fell within the expression used in item 21 of the Provincial Legislative List. The pith and substance of the Act was to empower the Collector to extinguish subsisting mortgages effected before 8th June 1901 subject to the condition of payment of compensation in certain cases. The Lahore High Court laid down that if the subject matter fell within the provincial legislative list, the mere fact that it might be affected by certain provisions in the concurrent legislative list would not attract the provisions of Section 107 regarding repugnancy.

The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act of 1940 was enacted with the assent of the Governor. Under this Act, every suit and proceeding in any Court for ejectment of a non-agricultural tenant, other than a suit or proceeding for ejectment on account of the non-payment of rent by such tenant, was stayed for two years from the 30th May 1940. The provincial legislature has the legislative power to direct the courts to stay proceedings for ejectment of a non-agricultural tenant. The Calcutta High Court held that in view of the provisions of Sec. 4 (1) of the Civil Procedure Code, the provisions of the Act of 1940 directing the Courts to stay proceedings for ejectment of a non-agricultural tenant are not repugnant to Order XXI, Rule 24, of the Civil Procedure Code, and that they are not invalid under Section 107 of the Act of 1935.

The Calcutta High Court (in *Sheikh Akbar Ali and others v. Sheikh Mafijuddin of Islampur*, June 6, 1941) held that Section 26G of the Bengal Tenancy Act so far as it allows the mortgagor of an occupancy holding in any form of usufructuary mortgage to recover possession of the mortgaged property after the expiry of 15 years was in conflict with the provisions of Section 62 of the Transfer of Property Act, but this repugnancy does not render Section 26G *ultra vires* inasmuch as transfer or alienation of agricultural land is not a matter falling in the concurrent

list but a provincial subject coming under item 21 of the provincial list of the Act of 1935, and all contracts relating to agricultural lands are also excluded from item 10 of the concurrent legislative list.

The U.P. Regularisation of Remissions Act of 1938 which regularised the remission of rent before the passing of the Act on account of the fall in prices was held by a full bench in the Allahabad High Court (3 F.L.J. H.C. 83) as beyond the competence of the United Provinces Legislature by reason of Section 292 of the Constitution Act of 1935. Section 292 provides that all the law in force in British India immediately before the commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent legislature or other competent authority. The High Court held that the alteration, repeal or amendment of any previously existing law could not be made with a retrospective effect, as the expression "until" put a time limit on the power of the legislatures. The Federal Court in *the United Provinces v. Mst. Atiqa Begum and others* (1941, 3 F.L.J. 97) definitely held that the Act XIV of 1938 was not beyond the competence of the legislature of the United Provinces which had power to legislate retrospectively within the sphere allotted to it.

The Madras Agriculturists' Debt Relief Act of 1938 was enacted with the assent of the Governor-General. The Act related, among other things, to the scaling down of debts and interest due on promissory notes and other negotiable instruments. The Madras High Court held in 1939 that as the Act in substance related to agriculture and money-lending which were subjects reserved for the provincial legislature its validity could not be affected. Moreover, the Act related to "contracts" falling within the concurrent legislative list, and it having received the assent of the Governor-General under Section 107, its provisions must prevail in the province unless and until the Federal legislature thinks fit to legislate in respect of the same matter.

It was pointed out by the Madras High Court that the effect of Section 107 (1) and (2) is this: a federal law always overrides a provincial law unless the provincial law is in respect of one of the matters enumerated in the concurrent legislative list and has been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure and has received the assent of the Governor-General or of His Majesty, in which case the provincial law prevails in the province until the federal legislature chooses to legislate further. The Federal Court¹ also agreed with the judgment of the High Court, although the Madras Act dealt in a very drastic manner with the problem of rural indebtedness and contained many unusual and startling provisions. The Act was applicable to all debts of an agriculturist. Both "debt" and "agriculturist" were defined in very wide terms.

New Amendments

The imposition of employment tax in the United Provinces by the provincial legislature brought out the question whether the provincial legislature had power to impose taxes for the benefit of a province in respect of professions, trades, callings or employments. "Tax" in legal parlance means nothing more than money which individuals are compelled to pay for public purposes. It is impossible to distinguish "tax" from cess or rate or duty.² Such a measure was objected to on the ground that it relates to a tax on income. The Government of

¹ There was, however, a dissenting judgment in the Federal Court by the Hon'ble Justice Sulaiman. In his opinion, the Madras Act was repugnant to the existing Indian law relating to promissory notes, which is exclusively a federal subject, and is void to that extent. The Hon'ble Chief Justice, Sir Maurice Gwyer, held: "I doubt whether any Provincial Act could in the form of a Debtors' Relief Act fundamentally affect the principle of negotiability or the rights of a *bona fide* transferee for value." (*Subrahmanyam Chettiar v. Muthuswami Goundan*, 1940, 3 F.L.J. 157).

² The judgment of Hon'ble Justice Din Mohammad, Lahore High Court, in *Daulat Ram. v. Municipal Committee*, (4 F.L.J.H.C. 47).

India Act 1935 was amended, and a new section 142-A was inserted by the India and Burma (Miscellaneous Amendments) Act 1940, providing that no provincial law relating to taxes for the benefit of a province in respect of professions, trades, callings or employments shall be invalid and that the total amount of such tax payable in respect of any one person shall not exceed fifty rupees per annum. It was also provided that any such tax which was in force during the financial year ending with the 31st day of March 1939 might not continue to be lawfully levied at a higher rate than fifty rupees per annum unless provision to the contrary is made by the Federal Legislature. This Amending Act did not limit the generality of the entry in the Federal legislative list relating to taxes on income. The Central Legislature passed the Professions Tax Limitation Act 1941 whereby the total amount payable in respect of any such person by way of such tax was limited to fifty rupees per annum. The Act saved the following taxes on professions, trades and callings as imposed under Chapter XII of the Calcutta Municipal Act 1923, Section 123 (1) (f) of the Bengal Municipal Act 1932, Section 128 (1) (ii) of the U.P. Municipalities Act 1916 and Section 66 (1) (b) of the C.P. Municipalities Act 1922.

There were other miscellaneous amendments by the India and Burma (Miscellaneous Amendments) Act 1940, some of which are connected with the question of provincial autonomy, *viz.*,

(A) the following was added in the Provincial Legislative List: 48-A. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars."

"48-B. Taxes on the consumption or sale of electricity, subject, however, to the provisions of Section 154-A of this Act."

(B) A new section numbered as 154A was inserted whereunder it was provided that "no Provincial law or law

of a federated State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity which is consumed by the Federal Government or sold to the Federal Government for consumption by that Government, or consumed in the construction, maintenance or operation of a Federal Railway by the Federal Railway Authority or a railway company operating that Railway."

(C) A new proviso was inserted at the end of sub-section 3 of Section 88 of the Act of 1935.

(1) "Provided that, for the purpose of the provisions of this Act relating to the effect of an Act of a provincial legislature which is repugnant to an Act of the Federal Legislature or an existing Indian Law with respect to a matter enumerated in the Concurrent Legislative List, an ordinance promulgated under this section in pursuance of instructions from the Governor General, acting in his discretion, shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him."

(2) For the proviso to sub-section (1) of the said Section eighty-eight there shall be substituted the following proviso:

"Provided that the Governor—

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if—

- (i) a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature; or
- (ii) an Act of the Provincial Legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, it had received the assent of the Governor-General or of His Majesty; and

(b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance if—

- (i) a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature; or
- (ii) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General; or
- (iii) an Act of the provincial legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, it had received the assent of the Governor-General or of His Majesty"

(3) In the proviso to sub-section (4) of Section 89, and the proviso to sub-section (3) of Section 90, of the principal Act, after the words "repugnant to an Act of the Federal Legislature" there shall be inserted the words "or an existing Indian Law with respect to a matter enumerated in the Concurrent Legislative List."

(D) The following paragraph was substituted for paragraph 17 of the Provincial Legislative List:

"17. Education, including Universities other than those specified in paragraph 13 of List I."

The following additions were made:

(a) at the end of paragraph 33 of the Federal Legislative List, there shall be added "but not including Universities."

(b) for the words "other than corporations specified in List I" in paragraph 33 of the Provincial Legislative List, there shall be substituted "not being corporations specified in List I or Universities."

The Civil Service

All service under the Crown is public service, that is for public benefit. It is a fundamental principle, based on public policy, that the Crown should have the unfettered discretion to remove a public servant at pleasure. The power to dismiss at will can only be controlled by a Statute but cannot be abridged or controlled by rules and regulations of service. The rules and regulations are directions given by the Crown for general guidance, and any violation of them would entitle such servant to appeal only to the administrative authorities and not to the civil courts. To give redress to a public servant in the case of suspension or dismissal is the responsibility and the sole responsibility of the executive Government. The expression "servant of the Crown" is not defined in the Government of India Act 1935, but it is to have the same meaning as "servant of the Queen", defined in the Indian Penal Code. Section 240 of the Act of 1935 provides that every person who is a member of a civil service of the Crown in India holds office during His Majesty's pleasure. The statutory prohibition in Section 240 to the effect that no office-holder shall be dismissed from service by any authority subordinate to that by which he was appointed could not be qualified or taken away by statutory rules. Section 241 provides that appointments to the civil services of the Crown in India shall be made in the case of services of a province by the Governor or such person as he may direct. All the powers of the provincial Governments including the power to recruit public servants and to regulate their conditions of service are derived under the Act of 1935 directly by delegation from the Crown and not by devolution from the Government of India. The provincial services will be essentially Crown services, and the Governor has a special relation to all the Crown services. No public servant appointed by the Governor will be subject to dismissal save by order of the Governor. The Joint Parliamentary Committee on Indian

Constitutional Reform noted that the Governor's Ministers should remember that "advice on matters affecting the organisation of the permanent executive services is a very different thing from advice on matters of legislative policy." Subject to the recruitments to the Indian Civil Service, the Indian Medical Service and the Indian Police Service by the Secretary of State for India and to his option to appoint persons in the Irrigation Department (as provided in Sections 244 and 245), the Federal and the provincial Governments are given freedom to recruit their own officers. Section 270 is a great safeguard for the servants of the Crown; it prohibits the initiation of proceedings in respect of the acts described therein against all servants of the Crown employed in connection with the affairs of the Government of India or of the province. The consent of the Governor-General or of the Governor is an essential prerequisite to the competency of the court to entertain civil or criminal proceedings, and its absence renders the entire proceedings void "*ab initio*".¹ Section 270 deals with past acts; Section 271 relates to future protection.

Provincialism

The Bengali-Bihari controversy under the regime of the Congress Ministry in Bihar offers an illustration that provincial autonomy, unless exercised within discreet limits born of the national unity of the country as a whole, tends to encourage inter-provincial jealousies and dissensions. Dr. Rajendra Prasad was asked to submit a report on the Bengali-Bihari controversy and the Congress Working Committee at its session in Bardoli, 1939, on the basis of Dr. Prasad's report adopted a long resolution formulating principles to guide the general policy of the Congress Governments in provincial administration. The resolution has its own importance in the working of provincial autonomy by the Congress, and the general principles enunciated therein are given below:

¹ In *Arjan Singh v. Emperor*, (1939, 2 F.L.J.H.C. 129).

(1) The rich variety of Indian culture and diversity of life are to be preserved and cherished; the idea of common nationality and common background of our cultural and historical inheritance is to be encouraged so that India may be built upon unity of purpose and aim.

(2) In regard to service there should be no bar preventing any Indian living in any part of the country from seeking employment in any other part, subject to the following considerations (a) a fair representation of the various communities in the province; (b) encouragement of backward classes and groups, (c) preference to the people of the province. (The preferential treatment is to be governed by rules and regulations framed by the provincial Government).

(3) In regard to Bihar, there should be no distinction between Biharis and Bengali-speaking residents of the province born or domiciled there. The practice of issuing certificates of domicile is to be abolished. Domicile is to be proved by evidence that the applicant has made the province his home. The length of residence, possession of house or other property are relevant. Birth in the province or ten years' continuous residence should be regarded as a sufficient proof of domicile.

(4) All persons holding posts under Government should be treated alike, and promotion should be based on seniority, coupled with efficiency.

(5) There should be no prohibition against any one carrying on trade or business. When accommodation is limited in educational institutions, place may be reserved for different communities. Preference may be given to the people of the province.

(6) In the parts of Bihar where Bengali is the spoken language the medium of instruction in primary schools should be Bengali. In secondary schools education should be given through the medium of the language of the province, but the State should provide for education

through the medium of any other languages where there is a demand for it from the residents.

With the starting of provincial autonomy, unaccompanied by responsible government in the Centre seeking to blunt the edges of provincial narrowness, a spirit of degenerate provincialism threatening the concept of Indian citizenship and Indian integrity grew up more or less in every province. In Bengal, such a restricted view did not flourish in governmental activities. But the communal approach in the province of Bengal blackened many efforts. Provincialism in Bengal was however nursed by the grievances of Bengali Moslems against the appointment of non-Bengali Moslems in the province. The Moslem League being an all-India organisation, the Ministry under the influence of the Moslem League preferred Moslems of any part of India to Hindus in appointments to positions of trust and influence. This policy narrowed down, in a sense, the gulf between Bengali Moslems and Bengali Hindus, and it was not a strange phenomenon that protests were heard from a common platform. It is difficult to choose between the two evils, narrow provincialism and intolerant communalism. Both are fatal to the integrity of India.

The High Court

It is to be noted that the Regulating Act of 1773 established the Supreme Court and Section 13 thereof gave it full power and authority to exercise and perform all civil, criminal, admiralty and ecclesiastical jurisdiction and to do all such other things as shall be found necessary for the administration of justice. The High Courts Act of 1861 abolished the Supreme Court and established the High Court in its place. Clause 16 of the Letters Patent provides that the High Court shall be a court of appeal from civil courts; all classes of civil courts and all other courts are subject to its superintendence. The following are the classes of civil courts: the Court of the

District Judge, the Court of the Additional District Judge, the Court of the Subordinate Judge and the Court of the Munsiff. The words "Civil Courts" in an Act do not include the High Court. By virtue of Section 223 of the Constitution Act of 1935, the High Court possesses just the same powers as it had before the Act came into force. The powers and jurisdiction of the High Court are derived partly from the Letters Patent and partly from Acts of Parliament. A provincial Act, even if it is assented to by the Governor-General, cannot cut down the powers of the High Court to hear suits and execute its decrees. In strict theory, provincial autonomy would suggest that the provincial legislature should have power to make laws touching the jurisdiction, powers and authority of all courts within the province with respect to subjects on which it is competent to legislate. The High Courts were taken out of the jurisdiction of the provincial legislature. Accordingly, it was provided in the Instrument of Instructions to the Governor-General and the Governor that any Bill which would derogate from the powers of the High Court should be reserved for the signification of His Majesty's pleasure. In *Narsingdas Tansukdas vs. Chogemull* (1939, 2 F.L.J.H.C. 71) the Calcutta High Court held that (1) Section 34 of the Bengal Agricultural Debtors' Act, so far as it relates to proceedings of the Calcutta High Court, is *ultra vires*, notwithstanding the fact that sanction had been accorded by the Governor-General under Section 80-A (3) for the enactment of that Act and (2) local legislatures, under the Government of India Acts of 1915 and 1918, had no power, even with the sanction of the Governor-General, to pass an enactment affecting the jurisdiction of a High Court derived from Parliament.

The trends of provincial legislation, if analysed, will be found to exclude the jurisdiction of civil courts in favour of establishing the authority of the executive. That amounts to executive despotism in the legislative field. The exclusion of the jurisdiction of civil courts creates a sense

of dissatisfaction to the aggrieved party, and where rights are concerned, they should not be taken away without an adjudication by civil courts. The following rule, as laid down by the Privy Council, should be noted: it is a settled law that the exclusion of the jurisdiction of civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

The Federal Court

A Federal Court is the conscience and balance wheel of a federal constitution. It is a tribunal for the determination of disputes between the constituent units of the Federation; its primary duty is to interpret the Constitution. It is, in that sense, the guardian of the Constitution. The Act of 1935 provides for the establishment of a Federal Court, which guarantees the smooth working of provincial autonomy. The Federal Court was duly inaugurated in India on the 1st of October 1937, and it consisted of a Chief Justice and two other Judges. The number of judges is not statutorily fixed. The increase in the number of puisne judges beyond six can be made at the request of the Federal Legislature, but presumably such an increase would be rendered necessary if the appellate jurisdiction of the Court was extended under Section 206.

The appointment of the Judge of the Federal Court is to be made by His Majesty by warrant under the Royal Sign Manual. The qualifications for the appointment of a Judge are: (1) a Judge of a High Court in British India or in a Federated State for at least five years; (2) a Barrister-at-Law or a pleader of a High Court of at least ten years standing. A person who is a Judge of a High Court as a

member of the Indian Civil Service cannot be appointed the Chief Justice of India. A lawyer who is a Judge of a High Court for at least five years or a Barrister-at-Law or a pleader of a High Court of fifteen years standing is qualified for appointment as the Chief Justice of India. The Judge of a Federal Court can be removed on the ground of misbehaviour or of infirmity of mind or body by the Crown on the advice of the Judicial Committee of the Privy Council. He may, however, resign his office by sending in his resignation addressed to the Governor-General.

There is provision for temporary appointment of the acting Chief Justice, but no such provision for appointment of a temporary or acting Judge of the Federal Court exists. The salaries, allowances and pensions payable to or in respect of Judges of the Federal Court are not votable by the legislature. By Order in Council passed on the 29th of July 1937, the salaries, allowances and pensions have been regulated. The salary of the Chief Justice has been fixed at Rs. 7,000 per month and that of the puisne Judge at Rs. 5,000 per month. The Federal Court shall sit in Delhi, but it might sit in such other places as may be fixed by the Chief Justice with the approval of the Governor-General.

The Federal Court is the highest tribunal in India, but it is not a Court of last resort. An appeal lies from the Federal Court, with leave, in its decision given in exercise of its appellate jurisdiction. The High Courts in British India can review their judgments by Section 114 of, and order XLVII of the first schedule to, the Civil Procedure Code. The Federal Court of India observes the maxim that a case once tried by it ought not to be re-opened and re-heard. That is the practice of the Judicial Committee and of the House of Lords; only mistakes and errors can be rectified. The Federal Court is not to sit as a court of appeal from its own decisions, nor is it to entertain applications to review on the ground that one of the parties in the

case conceives himself to be aggrieved by the decision.¹ In the absence of express statutory prohibitions, the rule-making power of the Federal Court may be utilised in regulating applications for a review of its judgments.

The Chief Justice, Sir Maurice Gwyer, recommended² that the following rules adopted by the Supreme Court of the United States should be followed by the Federal Court, *viz.*, (1) it has power in the exercise of its appellate jurisdiction not only to correct error in the judgment under review but to make such disposition of the case as justice requires, and (2) it is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

Under Section 176 (1) of the Constitution Act, a provincial Government may sue or be sued by the name of the province. But the Federal Court laid down, on the analogy of the Dominion practice, that where the validity or constitutionality of provincial legislation was in issue, and not any matter relating to the proprietary rights or interests of the province, the Advocate-General should represent the Executive Government for the time being of the province.³ In cases between private persons involving the constitutional validity of a Statute, the Advocate-General is a necessary and proper party, "in the sense that without him the Court cannot effectually and completely adjudicate upon and settle all the questions involved in the suit."

Under Section 204 of the Act of 1935, the Federal Court has, to the exclusion of any other Court, an original jurisdiction in any dispute between a province and the Centre, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. The ingredients of "legal rights" are a legal recognition and a legal protection.

¹ *Raja Prithwi Chand Lall Choudhury v. Rai Bahadur Sukhray Rai and others*, and *Subhanand Chowdhury and another v. Apurba Krishna Mitra and another*, (1940, 3 F.L.J. 67).

² *Lachmeswar Prasad Sukul and others v. Keshwar Lal Chaudhuri and others*, (1940, 3 F.L.J. 73).

³ *The United Provinces v. Mst. Atiqa Begum and others*, (3 F.L.J. 97).

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³ *The United Provinces v. Mst. Atiqa Begum and others*, (3 F.L.J. 97).

Under Section 205 (1) of the Act of 1935, if a High Court certifies that a case before it involves a substantial question of law as to the interpretation of the Act or any Order in Council made thereunder, an appeal would lie to the Federal Court:

- (a) on the ground that the question has been wrongly decided,
- (b) on any ground on which an appeal would have lain to the Judicial Committee of the Privy Council without special leave if no such certificate had been given (*vide* Sections 109 and 110 of the Civil Procedure Code), and
- (c) with the leave of the Federal Court on any other ground.

Section 205 imposes on the High Court the duty of considering and determining in every case, as part of its judgment, decree or final order, whether to give or withhold the certificate mentioned therein. A certificate under Section 205 is a necessary condition precedent to all appeals to the Federal Court. If the High Court refuses to grant a certificate, the Federal Court cannot entertain any appeal against the refusal. It is true that the constitutional question involved in a case is the primary ground for reference to the Federal Court, but once the certificate of the High Court is granted, the whole case including the other issues involved becomes appealable to the Federal Court.

The Federal Court cannot question the refusal of a High Court to grant a certificate or to investigate the reasons which prompted the refusal; the matter is one for the High Court when the forum of appeal is the Federal Court on the strength of the certificate granted; the right to go to the Privy Council, with or without special leave, disappears in terms of Section 205 (2). The procedure of appeals from High Courts is framed by the Federal Court, and practically the procedure in appeals from High Courts to the Judicial Committee, as regulated by Order XLV of the Civil

Procedure Code, is extended with necessary adaptations and modifications. Thus, a good part of the preliminary proceedings connected with an appeal is put under the control of the High Court. In the interest of justice, the Federal Court can relax the rigid compliance with procedural provisions.¹ The High Court cannot revoke any certificate, once granted, on non-compliance with the Federal Court rules, nor has it any inherent power to alter a certificate in the event of a change in the circumstances.

The Federal Court cannot in appeal substitute its own discretion for that of the High Court. If the question is one of a discretion of the High Court, the Federal Court cannot interfere with the way in which the discretion was used or waived, "unless it appears that the High Court did not apply its mind at all to the question, or acted capriciously or in disregard of any legal principle, or was influenced by some extraneous considerations wrong in law."² An appeal from the Federal Court would be admitted by the Privy Council if it raises a really substantial case.

The Federal Court of India does not encourage appeal to the Privy Council on constitutional questions. It rejected the applications in October 1942 for leave to appeal to the Privy Council in respect of the Punjab Restitution of Mortgaged Lands Act, the Bihar Agricultural Income Tax Act, the Punjab Land Alienation Act, the Madras Sales Act, and the Federal Court observed as follows:—"We are not disposed to encourage the Indian litigant to seek for determination of constitutional questions elsewhere than in their own Supreme Court. We do not and indeed we cannot lay down the rule that we will never grant leave to appeal, for that would be to alter the provision of the Act and to usurp legislative functions, but we shall grant it sparingly and only in exceptional cases."

¹ *Lachmeswar Prasad Shukul and others v. Girdhari Lal Chaudhri and others*, (1940, 3 F.L.J. 15).

² *Jai Gobind Singh and others v. Lachmi Narain Ram and others*, (1940, 3 F.L.J. 46).

CHAPTER VI

THE PARTY SYSTEM

Party government, it is obvious to the advocates of the British system of parliamentary democracy, is the vital principle of representative government. The business of a political party is to influence the electorate to accept its programme and to get its own leaders into office; its function is to keep them in office. The party machinery in Great Britain is, accordingly, organised on technical and professional lines. The rigidity of party discipline is an inevitable consequence, as a candidate for elections is left at the mercy of the party machinery. The candidate returned does, therefore, act not as a delegate of the electors but of his own party. A break with the party is generally a danger to the candidate because of the professionalised organisation of the party system.

Such a party does not obtain in India. The two-party system, as we find it at present in Great Britain, arises "from accident rather than from design." In India, the growth of political parties is hampered by the communal composition of the legislature. Indian politicians have no parliamentary experience; they thrive on opposition to Government; they are forced to appeal to the electorate as communal citizens; there is the presence of alien rule; the means of establishing touch with the village voters are not happy. All this retards the growth of a two-party system which is commended in English-speaking countries. The conditions in India make for the one-party system or for the multi-party system. The one-party system is fatal to parliamentary government, but the multi-party system makes for a coalition Government or for a minority Government. The one-party leads to personal dictatorship, as every successful leader tends to be a dictator; the two-party system helps "the dictatorship of the Cabinet" as the Government party seeks to support the Government in all that it does, "abdicating

the duty of frank and candid criticism"; the multi-party system brings about the transfer of the choice of the Government from the people to the elected legislature and necessitates compromises and adjustments of the party programme involving "inherent erosion of principle". Mr. Ramsay Muir argues the case for the multi-party system and for the adoption of proportional representation. In India, political creed is sacrificed to give weightage to communal opinion, and as such political parties move on communal lines. It is the curse of political India.

In the ultimate analysis, the party is a mechanism to control "public opinion about property in the particular way its members deem desirable." A party cannot maintain its cohesion unless there is agreement on certain fundamental principles, particularly of economic character. In our country, economic issues are being exploited for the furtherance of communal parties. The Moslem League is constituted of the higher middle classes appealing to the Moslem masses for the establishment of Moslem hegemony; the Hindu Mahasabha is dominated by the professional middle classes, anxious to win support on the issue of protection of Hindu traditions and culture as against the proselytising influence of the Moslem propaganda; the Congress looks more to wresting political power from the British through agitational obstruction and rally of anti-British forces; the Liberal Federation fights for more political rights through the path of working the Constitution on the analogy of the Dominions of the British Commonwealth. The continuance of communal electorates and the presence of a foreign Power, together with the complex cross-currents of the intricate Hindu society based on caste divisions, obstruct the emergence of political parties built around economic issues.

The Swaraj Party

The development of the party system in India cannot but take a peculiar line because of the presence of the

foreign Power. The Congress which is the best knit organisation in the country definitely cut itself away from the path of constitutionalism by launching the non-co-operation movement in 1921. The Congress boycotted the elections to the first reformed legislature under the Act of 1919. But in the second elections in 1923, a new all-India party under the leadership of Mr. C. R. Das was formed to substitute the policy of wrecking the legislatures from within for the policy of boycott pursued in the first elections. The new party was known as the Swaraj Party. It was formed with the help of those Congress men who, conscious of the failure of non-co-operation, turned to "a new method of embarrassing Government". Its candidates offered themselves for election to the legislatures on a pledge of "uniform, continuous and sustained obstruction with a view to making government through the Assembly and the Councils impossible." The Swaraj Party in the 1923 elections met with opposition from the adherents of Mahatma Gandhi in the Congress, but their striking success in the elections and their sustained opposition to Government in the legislatures brought popularity and prestige which could not be ignored by Mahatma Gandhi's followers. And the Swaraj Party was recognised by the Congress. The Congress laid down that members of the Party in the legislatures should pursue a policy of obstruction and that no member was to accept office or a seat on a Select Committee or to take part, as an individual, in current business. The stiff attitude melted down later to some extent, but the Swaraj Party refused to accept ministerial responsibilities. In Bengal where the Swarajists were in a minority in the Legislative Council, and in the Central Provinces where the Swarajists obtained a majority in the legislature, Dyarchy was made unworkable, although temporarily, but in other provinces they functioned as an Opposition of a more constitutional kind, and "not infrequently played a useful part as keen and vigilant critics". But the attitude of the Swaraj Party to

the Constitution was one of opposition and not of co-operation and as such it was of no help to the growth of constitutional government. It was undoubtedly a political party on non-communal lines, but its tactics were not helpful for the purpose of broadening the base of self-government through the working of the reforms.

The barren tactics of the Swaraj Party brought about fissures between its adherents. In the Indian Legislative Assembly, the Swaraj Party was functioning with success under the leadership of Pandit Motilal Nehru, but the policy of complete non-co-operation within the legislature did not win acceptance from certain influential members of the Party. Mr. Jayakar, Mr. Kelkar and Dr. Moonjee "split off from the main body and formed the party of responsive co-operation". The Responsivists were ready to take full advantage of the opportunities open to them under the Constitution, although they were "no less ready than the Swarajists to carry on the struggle for their common political ends."

In India, elections do not offer an arena "for the real contest between a party in power and a party or parties aspiring to power". The Swaraj Party appealed to the electorate for the support of its programme of obstruction within the legislature. In many scattered constituencies there have been personal appeals by individual candidates without any help of party machinery at election time; they are no substitute for party contest and political programme. It was only the Justice Party in Madras which could appeal as a Government party to the electorate on its record. The Swaraj Party could not attract the voters by pointing to the prize of office; it enthused them by promises of wresting power through obstruction and confusion. The introduction of real political responsibility giving rise to co-operating political parties was not achieved in India. The position of the Opposition in the legislatures in India is different from the Opposition in the British Parliament which 'lives and

grows on the prospect of a return to office. This difference is maintained by the unique organisational strength of the Indian National Congress, as all the non-Congress parties are in favour of working the Constitution, however disappointing and unsatisfactory it may appear to them. The technique of constitutionalism is detested by the Congress which seeks to win popular support by remaining a fighting organisation against the authority of British rule in India. The Congress sought to increase the people's power of resistance through obstruction; it refuses to accept the modern political lessons that real power resides in the State, and that the seizure of State-power, however imperfect, can be utilised for the consummation of the Congress objective far more peacefully and effectively, although the period of interregnum may not be shortened as in the case of revolutionary action.

The Congress Party

The Congress has built up a remarkable organisation, by far the most efficient political machine in India. It is numerically the largest single party in British India. The Congress under the guise of the Swaraj Party entered the legislatures under the Reforms Act of 1919 to wreck the Constitution, and till the end it stuck to the principle of refusing office. In the reformed legislatures under the Act of 1935 the Congress sought elections to combat and wreck the Constitution, but it accepted office in 1937 after a good deal of hesitation. The Congress though pledged to wreck the Constitution from within did not try any such device, so long as it was in office. The Congress Ministers came out of office in 1939 as a protest against the war policy of the British Government in India.

The Congress in running the elections to the provincial legislatures under the Act of 1935 behaved as a well knit political party. In a press message to all the Congress candidates at the elections, issued from Allahabad on the 4th of January 1937, Pandit Jawaharlal Nehru, President,

Indian National Congress, observed: "Let them remember that they represent a cause, a principle and an idea. They do not stand on personal grounds but as soldiers of the Congress and of Indian Freedom, and it is on that ground alone that they seek the suffrage of our people. Those who believe in that cause must help them and vote for them". Any Congress man standing against the official Congress candidate in the elections was suspended from the Congress organisation. The first instance occurred in the United Provinces where Guru Raghubar Dayal of Cawnpore was suspended from the membership of the Congress for standing in opposition to the official Congress candidate, Dr. Jawaharlal, for Cawnpore city. Similar instances were found in nearly all provinces, and there was no hesitation in taking disciplinary action against those who refused to obey the Congress mandate. In Bengal, Mr. Sarat Chandra Bose, Acting President, Bengal Provincial Congress Committee, suspended Mr. Kamini Kumar Datta of Comilla, Mr. Dhiresh Chandra Chakravarty of Dacca West and Mr. Nishit Nath Kundu of Dinajpur from the primary Congress Committee membership for opposing the official Congress candidates. In Bihar, Dr. Satyanarain Singh was suspended by Dr. Rajendra Prosad, President, Bihar Congress Committee, for opposing the official Congress candidate from Saran district.

In the Congress Election Manifesto it was pointed out that "every party and every group that stands aloof from the Congress organisation tends knowingly or unknowingly to become a source of weakness to the nation and a source of strength to the forces ranged against it". The Congress leaders pushed on Congress candidates as the only candidates pledged to work for the welfare of India, and clever propaganda was conducted to the effect that non-Congress candidates had not the true interests of India at heart, as they wished to flourish with the aid and support of the British Government. In the presidential address at the Faizpur Congress, 1936, Pandit Jawaharlal Nehru defined

the objective of the Congress: "The Congress stands to-day for full democracy in India and fights for a democratic State, not for socialism. It is an anti-Imperialist body and strives for great changes in our political and economic structure. The urgent and vital problem for us to-day is political independence and the establishment of a democratic State". This objective guided the Congress in running the elections and drawing up the parliamentary programme of the Congress Party.

The Congress Working Committee passed a definite resolution on the 1st of March 1940 that "Indian freedom cannot exist within the orbit of Imperialism and Dominion Status or any other status within the Imperial structure" and that "India's Constitution must be based on independence, democracy and national unity."

The Congress, in fact, stands for political democracy, not for economic democracy, in spite of the professions of the Congress Socialist Party. Political democracy is built upon capitalist foundations, and Indian capitalists have always leaned to the side of the Congress. It is a favourite thesis of Prof. Harold Laski that political democracy seeks, by its inner impulses, to become a social and economic democracy. But that stage may be delayed by offering a constantly increasing standard of life to the masses. The Congress has fought for Indian capitalists and criticised the commercial safeguards devised in the interests of foreign capitalists. The Congress Working Committee adopted a resolution in April 1938 that "India has the right to discriminate against non-national interests whenever and wherever the interests of India demand or require it". The Congress has no objection to the use of foreign capital or to the employment of foreign talent when such are not available in India or when India needs them but on condition that such capital and such talent are under the control, direction and management of Indians and are used in the interests of India. The Congress will not regard any concern as "swadeshi" unless its control, direction and

management are in Indian hands, and it would prefer to delay the development of Indian industries if this only results in the dumping of foreign industrial concerns who will exploit the natural resources of India.

The Congress accepts certain fundamental postulates in a free India, which were reiterated by the all-India Congress Committee at its Calcutta session in October 1937. They relate to the freedom of conscience and the right to profess and practise one's religion subject to public order and morality; the protection of the culture, language and the script of minorities and linguistic areas; equality before law; the removal of disability in public employment or in the exercise of trade or calling because of religion, caste, creed or sex; neutrality of the State in regard to all religions; universal adult suffrage and freedom to move, stay, acquire property and to follow a trade or calling throughout India. The Congress Committee gave a guarantee of freedom and an opportunity to the individual and each group to develop unhindered according to its capacity and inclination and an assurance that a minority is entitled to keep its personal law. The objective of the Congress, in the language of the resolution of the all-India Congress Committee, is an independent and united India where no class or group or majority or minority may exploit another to its own advantage and where all the elements in the nation may co-operate together for the common good and advancement of the people of India. The Congress claims that in all matters affecting the minorities in India it wishes to proceed by their co-operation and through their good will in a common undertaking and for the realisation of a common aim which is the freedom and betterment of the people of India.

It may be mentioned, in this connection, that the charter of fundamental rights approved by the Hindu Mahasabha in its Calcutta session in December 1939 runs on the lines adopted by the Congress in respect of free expression, free association, free combination and free

movement, and equality before law. But the Mahasabha was careful not to insist on the adult franchise, though it accepted the right to a decent standard of living, to free and compulsory primary education and to all facilities in respect of liberal education, and the right to defend India against foreign aggression and to bear arms and to be educated in all branches of the Army, Navy, and Air Force. The Hindu Mahasabha prefers to refer the problem of minorities to the League of Nations of which India is a member.

Mahatma Gandhi maintains that "the Congress is an all inclusive body" and that "it is the only body that has represented for over half a century without a rival the vast masses of India irrespective of class or creed".¹ Pandit Jawaharlal Nehru as Congress President has maintained the proposition that there are two parties in the country, *viz.*, the Congress and the British Government. Mr. Jinnah criticises Mahatma Gandhi for the contention that the Congress alone represents India. In Mr. Jinnah's view, the Congress is stimulating throughout India a Hindu renaissance and the domination and supremacy of Hinduism over the entire sub-continent, and is a Fascist and authoritarian body. The view that the Congress and the Moslem League do not represent the whole or even the bulk of India and that any constitutional or administrative arrangement arrived at between the Government and the Congress and the Moslem League only cannot be binding on the Indian people is expressed in a joint statement issued from Bombay on the 2nd of October 1939 over the signatures of Sir Chimanlal Setalvad, Sir Cowasji Jehangir and Mr. V. N. Chandravarkar (Liberals), Mr. V. D. Savarkar (Hindu Mahasabha), Mr. N. C. Kelkar and Mr. Jamnadas Mehta (Democratic Swaraj Party) and Dr. B. R. Ambedkar (Depressed Classes).

Mahatma Gandhi and the Congress accepted the position that Hindu-Moslem unity was the basis of India's

¹ Gandhi's statement in September 1939.

independence. But the stand of Mr. Jinnah and the Moslem League was found to be reactionary and uncompromising, and accordingly the Congress veers round to the proposition that the communal problem cannot be satisfactorily met so long as different parties are there to look to a third party through whom they may expect to gain special privileges, even though at the expense of the nation. The rule of a foreign Power over the people involves a division among the elements composing it, and lasting unity is possible only when foreign rule is completely withdrawn. This was the stand approved by the Congress Working Committee at the Wardhaganj meeting in December 1939, and it was further maintained when the Congress demanded the withdrawal of British power from India and criticised the political parties that look to the British power for their sustenance.¹ Mahatma Gandhi explaining the logic of such a stand observes in an article in *Harijan*: "The conception is not that of a settlement with the British Government. That could happen only if there is a settlement between the principal parties, and as a preliminary between the Congress and the League. But that, so far as I can see, is not to be. Therefore, the only settlement with the British Government can be that their rule should end leaving India to her fate."

The Forward Bloc

The formation of the Forward Bloc under the leadership of Mr. Subhash Chandra Bose was the first organised attempt at internal revolt against the authoritarianism of the Congress High Command. Many brilliant individual Congress leaders, such as Dr. N. B. Khare, ex-Chief Minister of the Central Provinces, and Mr. K. F. Nariman, President of the Bombay Provincial Congress Committee, have gone down under the axe of Congress

¹ The Resolution of the Congress Working Committee at the Wardha meeting on the 14th of July 1942, ratified by the Bombay meeting of the all-India Congress Committee in August 1942.

discipline. All this raised a mild ripple of protests which died down in the ocean of Congress influence. But the conflict of Mr. Subhas Chandra Bose with the Congress authorities gave birth to the Forward Bloc. Mr. Bose incurred the displeasure of the Congress High Command by seeking the suffrage of Congress members in respect of the Congress Presidentship for the second term in opposition to the candidature of Dr. Pattabhai Sitaramiya. Mahatma Gandhi and the Congress Working Committee did not favour the re-election of Mr. Subhash Chandra Bose, and were shocked at his success over Dr. Sitaramiya. That was a significant event in Indian politics and a still more significant event for Congress politics. Mr. Bose, confronted with the united opposition of Mahatma Gandhi's followers, had to resign the Congress Presidentship in 1939. But he did not remain silent after resigning, and announced the formation of the Forward Bloc at a public meeting in Calcutta on the 3rd of May 1939. The Forward Bloc, he explained, would function as an integral part of the Congress and would accept the present constitution of the Congress, its creed, policy and programme. To quote Mr. Bose, "the Forward Bloc will not be a party as ordinarily understood but a platform for rallying all those who accept the programme of the Bloc". The programme of the Bloc was to consolidate or co-ordinate all left wing parties, separate religion from politics, combat provincialism, work out a parliamentary programme with a view to setting up a parallel Government, adopt the policy of a united front with the people of the Indian States, and take the offensive at the right time. Presiding over the first session of the all-India Forward Bloc Conference in Bombay on the 22nd of June 1939, Mr. Bose said: "We are out to fight with authoritarianism in the Congress. We do not believe in authoritarianism, and the theory of homogeneous Cabinet can only proceed from those who believe in authoritarianism." The Forward Bloc spread its organisation all over India and got the support of many nationalists who

were discontented with the Congress technique of power politics.

In Bengal the Forward Bloc gained ascendancy as the official Congress Party was weak in strength and leadership, but it came into conflict with the Hindu Mahasabha Party which obtained powerful support under the *de facto* leadership of Dr. Syama Prasad Mookerjee. The two provincial organisations, the Bengal Hindu Sabha and the Bengal Provincial Hindu Sabha, were amalgamated in 1939 into one consolidated party, the Bengal Hindu Mahasabha, which was bent on the vindication of Hindu rights, and the new Hindu Mahasabha Party in Bengal challenged the leadership of Mr. Subhash Chandra Bose. In the Calcutta Corporation elections in 1939, the Hindu Mahasabha Party came into the field and had a trial of strength with Mr. Bose's party, from which the Hindu Mahasabha came out with flying colours to the general surprise. In a bye-election to the Bengal Legislative Assembly in 1941 from the North Bengal General Municipal Constituency, the Hindu Mahasabha candidate Mr. Ashutosh Lahiri was elected with a majority of nearly nine thousand votes to the disgrace of the Forward Bloc candidate. All this showed that Bengal moved away, in the first instance, from the influence of the Congress to the whip of the Forward Bloc, and later to the fold of the Hindu Mahasabha. The growing prestige of the Hindu Mahasabha in Bengal was a sudden reaction from the communal approach of the Moslem League Ministry in Bengal, and it was helped by the lack of leadership in the Bengal Congress organisation. But with the decline of communal ill will, nationalist Bengal is sure to come out of the communal groove of the Hindu Mahasabha and to move with the all-India political movements of the radical kind. The motive power of emotionalism which Bengal possesses to a great degree is easily ignitable, and Bengal is caught more by slogans than by slow constructive action. The ascendancy of the Hindu Mahasabha which confuses politics with religion as the

Moslem League does is bound to be short-lived. The Bengal of Raja Rammohan Roy, Aurobindo Ghose, Surendra Nath Banerjee, C. R. Das and Rabindra Nath Tagore cannot accept the creed of the Hindu Mahasabha for any length of time. In the search for leadership, Bengal veered round to the Hindu Mahasabha, and in quest of nationalism Bengal will have to discard the Hindu Mahasabha. It is a passing phase for Bengal. In the process of time, the Hindu Mahasabha and the Moslem League may meet as the champions of vested interests if the Congress ever gains supremacy with any bold economic programme. That interesting phase is yet to come.

The Liberal Party

The Montford scheme of Reforms was the signal for the secession of the Moderate leaders from the Indian National Congress. The Moderates decided to abstain from the special session of the Congress held at Bombay at the end of August 1918, and formed themselves into an independent party to work the reforms. They held a special session of the Moderate Conference in November 1918 to formulate their views on the Montford proposals. They were impressed with the profound change in the spirit and the policy of the Government, and they stood for working the reforms which were considered on the whole satisfactory. They wanted to strengthen the hands of Mr. E. Montagu by their support. This Moderate or Liberal Party has stood by the Government in working the constitutional reforms even when they are considered unsatisfactory. Such an approach in the spirit of co-operation discouraging the rally of anti-British forces for direct and subversive action is the unique contribution of the Moderate politicians.

The Liberal Party suffers from the main defect that it does not maintain living touch with the towns and villages through a net-work of organisations, nursed by the

sacrifices of volunteers. It has remained a purely city organisation, and its importance is dwindling away along with the extension of the franchise and the dominance of party elections. The contributions of Liberals to Indian politics can, however, hardly die. They have behaved as the vanguard of constitutionalism; they have put forth their best efforts and made sacrifices in the exploitation of the constitutional machinery for the welfare of the country; they have sailed in the vessel of constitutionalism in the darkest storm of disobedience and unconstitutional activities launched by the Congress. Mr. Srinivas Sastri rightly observed in the nineteenth session of the National Liberal Federation: "It may be that the days of our (Liberals) power are gone, but the days of our influence are by no means gone. Few though we are, we are not without the power of warning against danger, of advancing in difficulty, of pointing out the way of safety and sanity."

The Liberal Party stands for the grant of full responsible government of the British model, and has advocated Dominion Status for the country. A genuine effort and a definite advance towards the progressive realisation of responsible government in India have earned appreciation from the Liberal Party. The Liberal Party approaches the country's problems with the aid of constructive patriotism; it stands far above communalism or spiritualism in politics; it refuses to confuse politics with non-political considerations; it works for the synthesis of class and communal interests; it abjures power philosophy which is the antithesis of democracy. The Party goes down in elections through the absence of organisational strength, as "constitutional principles and forms do not operate in a vacuum of abstract reason"; it is, however, vindicated in the ascendancy of the right-wing Congress men in Indian politics. With the Liberal Party, however, the call to direct action without exploring possibilities along the path of constitutionalism is a counsel of despair.

The Justice Party

The Justice Party in Madras was formed with the object of fighting the predominance of Brahmins in the political life of that Presidency. It was a non-Brahmin party, but the cleavage in Madras was not solely sectarian. The non-Brahmins were prepared to work the Constitution of 1919; their opponents were not. The Justice Party of Madras secured a majority in the first election to the Madras legislature under the Reforms Act of 1919; it was helped by the eloquent fact that the Congress under the influence of the non-co-operation policy boycotted the elections. The Simon Commission reports that "the existence of a majority party in Madras made it possible to constitute a Ministry which accepted the principle of joint responsibility and acknowledged the leadership of a Chief Minister" and that "for the first and last time in the history of dyarchy throughout India, there was a Ministry both drawn from a single party and supported by an assured majority of elected members in the Legislature". The Justice Party made use of its power "to secure favourable treatment for non-Brahmins in the matter of appointments to the Government services and to local bodies". In the next elections in 1923, the Justice Party was opposed, but it retained a majority. In the 1926 elections, the Swarajists succeeded in reducing its majority. In the elections in 1937 under the Act of 1935, the Justice Party went down before the Congress Party.

The Unionist Party

The National Unionist Party of the Punjab is not a communal organisation, although it is predominantly Mahomedan. The Party helped the working of the reforms of 1919, and, to quote the report of the Simon Commission, "the best instance of something approaching true (even if not non-communal) parties are the Justice Party in Madras and the National Unionist Party in the Punjab". In the elections to the first reformed legislature under the Act of

1935, the Justice Party showed a decline of strength while the Nationalist Unionist Party gained considerable support and influence from the electorate.

The creed of the Punjab Unionist Party is the attainment of Dominion Status by all constitutional means, the securing of an honourable status for Indians overseas, the establishment of provincial autonomy in the province, the acceptance of the community of economic interests as the true basis of political parties irrespective of caste or creed, and the provision of equal facilities and opportunities for all with special solicitude for the backward classes.

The Unionist Party considered the Reforms Act of 1935 to be most unsatisfactory, but "since it is the law of the land, the Party is determined to get the best possible result out of it". The Punjab was the first province to produce a majority party "able and willing to shoulder the responsibility of Government under Provincial Autonomy." In Bengal, there was no single majority party, and a coalition Government was inevitable. But in the Punjab the Unionist Party came out from the election contest in 1937 with a membership of 101 in the Legislative Assembly of 175. The composition of the Unionist Party in the legislature showed that it had Moslems, Hindus and Indian Christians among its members, and there was also one Anglo-Indian and one European. The Hon'ble Major Sardar Sir Sikander Hyat Khan was appointed Chief Minister as the leader of the Unionist Party; he chose, besides himself, three Ministers from his own party and two from outside. The leader of the Unionist Party could easily have initiated a one-party Government for the Punjab, but he did not; he showed a commendable spirit of compromise by taking in two non-Unionist members. Strictly speaking, it was not a single party Ministry, nor was it a coalition Ministry. The two non-Unionist Ministers were included in the Cabinet, "not as the nominees of any Parties but because the Unionist Leader found in them suitable colleagues to have with him in the interest of his

programme". They were not asked to adopt the Unionist label. It involved no pact or bargain with the Khalsa National Party and the National Progressive Party wherefrom the two Ministers were recruited. The Punjab Unionist Party, as such, cannot be swallowed by the Moslem League, although Sir Sikander Hyat Khan was one of the leading lights of the League. "The position of the Punjab Ministry at the end of the first eighteen months of provincial autonomy appeared to be that about 120 members in a total House of 175 had been consistent in accepting the Ministry's whip. These 120 members included about two-fifths of the total number of Hindu members and more than one-half of the Sikh members besides the bulk of the Muslim members and all the Indian Christian, Anglo-Indian and European members in the House. From this point of view the Ministry could well claim to enjoy the confidence of religious minorities in this province to a greater extent than any other provincial Ministry did."¹

Mr. Jinnah and the Moslem League

Mr. Jinnah, an astute politician, has been a living force in Indian politics for a long time. The all-India Moslem League was founded in December 1906 at Dacca; its constitution was framed in December 1907 at Karachi, and ratified in March 1908 at Lucknow. It was a loyalist association organised to press the special demands of Moslems on the attention of Government. It was anxious to demand the steady pursuit of administrative reforms, and unlike the Congress the League did not want the attainment of self-government. Mr. Jinnah did not and could not join such an organisation. Through the efforts of Mr. Jinnah and of some others the Constitution of the Moslem League was amended in 1913, and the attainment of a system of self-government suitable to India through

¹"A Review of the Administration of the Punjab from April 1, 1937, to September 30, 1938" issued by the Director, Information Bureau, Punjab.

constitutional means was proclaimed as one of the basic objects of the League. It was under the influence of Mr. Jinnah that steps towards national unity and communal co-operation were taken in the form of the Congress-League Pact of 1916. The Pact was divided into five parts: Part I dealt with the constitution and functions of the Provincial Legislative Councils; Part II referred to the constitution of Provincial Executives; Part III related to the composition and powers of the Imperial Legislative Council; part IV dealt with the constitution and powers of the Government of India consisting of the Governor-General and the Executive Council; Part V touched on the future of the Secretary of State and his Council. The Pact became India's National Demand during 1917, and it was pressed on the Montagu Mission touring India in the cold weather of 1917-18.

With the advent of Gandhism in Congress politics, moderate Hindu Congress men began to gather round the Liberal Federation founded in 1918, but Mr. Jinnah and his associates preferred to stick to the Moslem League and make it a purely communal organisation to safeguard Moslem interests and advocate the Moslem cause. Mr. Jinnah appeared as the author of the famous fourteen points which showed that he had changed his political creed and leaned more on the British Government to obtain special political rights and privileges for Moslems. The fourteen points which offer an interesting study of the swing of Mr. Jinnah's mind towards communalism from the influence of Congress ideology are stated below:—

1. The future constitution to be federal, the residuary power being vested in the provinces.
2. Uniform measure of autonomy to be granted to all provinces.
3. Adequate and effective representation of minorities without reducing the majority in any province to a minority or even equality.

4. In the Central legislature Moslem representation to be not less than one-third.

5. Representation of communal groups by means of separate electorates, provided it shall be open to any community to abandon at any time separate electorates in favour of joint electorates.

6. Any territorial redistribution necessary not in any way to affect the Moslem majority in the Punjab, Bengal and the North-West Frontier province.

7. Full religious liberty to be granted, that is, liberty of belief, worship and observance; propaganda, association and education.

8. No Bill or resolution to be passed in any legislature or elected body if three-fourths of the members of any community in that body oppose it on the ground that it would be injurious to the interests of that community.

9. Sind to be separated from the province of Bombay.

10. Reforms in the North-West Frontier province and Baluchistan to be on the same footing as in other provinces.

11. Moslems to be given in the constitution an adequate share in all the services of the State having due regard to the requirements of efficiency.

12. The constitution to embody adequate safeguards for the protection of Moslem culture.

13. No Cabinet, Central or Provincial, to be formed without there being a proportion of at least one-third Moslem Ministers.

14. No change to be made in the constitution by the Central legislature except with the concurrence of the States constituting the Indian Federation.

It is interesting to find that the Government of India Act 1935, read together with the Instrument of Instructions, tries to meet nearly all these points except number 8. The other points are, in effect, more or less accepted, and all

this shows the personal triumph of Mr. Jinnah who is not a doctrinaire politician but a vigilant advocate for the cause of his own community. He greatly influences the opinion of the great Moslem community, and as such holds a key position in Indian politics. He knows that the Moslem League represents Moslems functioning in the higher regions of the upper middle classes, and with illiteracy enveloping the Moslem masses the Moslem League can rule for sometime through propaganda conducted on planned lines, although politically it is inclined towards a programme which may not meet with the full approval of the masses.

Mr. Jinnah is frankly apprehensive of a democratic form of government in India. He puts his case thus:¹ "Having regard to the thirty-five million of voters, the bulk of whom are totally ignorant, illiterate and untutored, living in centuries-old superstitions of the worst type, thoroughly antagonistic to each other, culturally and socially, the working of this Constitution (that is, the Constitution of 1935) has clearly brought out that it is impossible to work a democratic parliamentary Government in India. It has definitely resulted in a permanent communal majority Government ruling over minorities, exercising its powers and functions and utilising the machinery of Government to establish the domination and supremacy of the majority communal rule over the minorities". In his judgment democracy in India means Hindu Raj, "a position to which Moslems will never submit". In his opinion "Moslem India wants to be free and enjoy liberty to the fullest extent and develop its own political, economic and social and cultural institutions according to its own genius and not to be dominated and crushed while wishing Hindu India well and giving it fullest scope to do likewise".

¹ Mr. Jinnah's long statement in "Manchester Guardian," October 1939.

Mr. Jinnah's acceptance of the Pakistan creed, criticism of the parliamentary system and defence of British rule (at least till a communal settlement is arrived at to the satisfaction of the Moslem League) are significant. This change in his attitude and outlook has resulted from the impact of events: Congress dominance in the majority of provincial legislatures, the alleged failure of the Congress Governments to treat Moslems and other minorities fairly and the inability of the Moslem community in the Congress provinces to make its influence felt under the scheme of provincial autonomy.

Before the elections to the provincial legislature under the Act of 1935, Mr. Jinnah showed a commendable spirit of compromise. If we analyse his election speeches and other addresses before the introduction of provincial autonomy, we find him advocating full democratic responsible government for the people of India and supporting the programme of working in co-operation with the other political parties in the legislatures¹. He was very anxious that Hindus and Moslems should present a united front and work together for the freedom of the motherland. The Moslem League's objective, he pointed out, was the progress and freedom of the motherland, and he wanted to produce by a process of hammering fine steel and to push out of the way those obstructing their march to freedom.² He put his case in a very attractive way: "Ours is not a hostile movement. Ours is a movement which carries the olive branch to every sister community. We are willing to co-operate, we are willing to coalesce with any group or groups, provided their ideals, their objects are approximately the same as ours."³ Mr. Jinnah maintained that "the Moslem League stands for full national self-government for the people of India. Unity and

¹ Mr. Jinnah's statement from Bombay, January 17, 1937.

² Mr. Jinnah's speech at Nagpur, January 1, 1937.

³ Mr. Jinnah's address at the Calcutta Town Hall on the 20th August 1936.

honourable settlement between Hindus, Moslems and other minorities is the only pivot upon which national self-government for India of three hundred and eighty millions can be constructed and maintained"¹.

He even went so far as to say that "there is a no difference between the ideals of the Moslem League and of the Congress, the idea being complete freedom for India. There could not be any self-respecting Indian who favoured foreign domination or did not desire complete freedom and self-government for his country".² His aim in the elections, he asserted, was to send to the legislatures patriots and nationalists, as it would lead more quickly towards unity when the best minds of Hindus and Moslems had hammered out a common policy. His central thesis in those days was that the Moslem religion, culture, language and political existence in the national life of India should be adequately and effectively safeguarded, and that to broadbase the freedom of India the problem of minorities must be solved. He denied that there was any communalism in his attempt to make his community strong. That he was not really reactionary could be gathered from the fact that the Congress Opposition in the Central Assembly received valuable support from Mr. Jinnah.³

A change soon came over Mr. Jinnah. Under his leadership the all-India Moslem League at its Lahore session on the 23rd of March 1940 adopted a significant resolution urging the following points: (1) the scheme of federation embodied in the Government of India Act 1935 is totally unsuited to and unworkable in the peculiar conditions of the country and is altogether unacceptable to Moslem India; (2) Moslem India will not be satisfied unless the whole constitutional plan is reconsidered

¹ Mr. Jinnah's statement on the 10th April 1937 issued from Bombay.

² Mr. Jinnah's speech at a reception in Simla, September 18, 1937.

³ This admission is recorded in a statement issued by Mr. Asaf Ali, Whip of the Congress Assembly Party, on the 23rd January 1937.

de novo and no revised plan would be acceptable to Moslems unless framed with their approval and consent; (3) no constitutional plan would be acceptable to Moslems unless the geographically contiguous units are demarcated into regions which should be so constituted with such territorial readjustments as may be necessary to ensure that the areas in which Moslems are numerically in a majority as in the North-Western and Eastern zones of India should be grouped to constitute "Independent States" in which the constituent units shall be autonomous and sovereign; (4) adequate, effective and mandatory safeguards should be specifically provided in the constitution for minorities in the units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them; (5) there should be assumption finally by the respective regions of all powers such as defence, external affairs, communications, customs and such other matters as may be necessary.

The Moslem plan of partitioning the country into separate Hindu and Moslem States received encouragement from the British Government. His Majesty's Government was naturally convinced that the future constitution of India was not to be dictated by the Government and Parliament of Great Britain, but they remained shut up within the confine of the basic propositions that "a substantial measure of agreement amongst the communities in India is essential if the vision of a united India is to become a reality" and that the British Government would not attempt to impose upon the nine crores of Moslem subjects a form of constitution "under which they would not live peacefully and contentedly". There was no undertaking given by His Majesty's Government at any stage that Indians were to be left alone to present a constitution based on united will and co-operation, as they were always reminded of the special obligations and responsibilities of the British which caused suspicion and undermined national unity.

Lord Zetland, Secretary of State for India, gave encouragement to the Pakistan resolution adopted at the Lahore session of the Moslem League by stating that he appreciated the grounds on which the proposal was based, although he regarded it as constituting something not far short of a counsel of despair¹. Mr. Amery who succeeded Lord Zetland as Secretary for India emphasised in his public utterances the differences between Moslems and Hindus in religious and social outlook and in historic tradition and culture; he significantly pointed out that "India's future house of freedom has room for many mansions"². But in the admitted diversity of India, the unity of administration and of political thought and aspiration could not be ignored, and accordingly there was a sympathetic echo in their statements that the differences in India were not unbridgeable and that underlying these differences there was the fact that India was a self-contained and distinctive region of the world.

It is intriguing to find that Mr. Amery and Mr. Jinnah agree on fundamentals which should form the basis of an end to the Indian constitutional deadlock. Mr. Amery's thesis is as follows:³ (1) the future constitution of India must be framed by agreement amongst representatives of the principal elements of her national life, and there cannot be any transfer of power to any system of Government in India whose authority is directly denied by large and powerful elements of the national life; (2) the principle of majority vote cannot be regarded as applicable to the framing of a constitution embracing varied elements or even to its modification; (3) the conditions do not exist in India for the framing of the type of constitution in which parties are the machinery for the expression of differences on specific public issues; (4) the experience of provincial self-government on British parliamentary lines has convinced Moslems and Indian Rulers that they could not

¹ Speech in the House of Lords, April 18, 1940.

² Speech in the House of Commons, August 14, 1940.

³ Mr. Amery's speech at Manchester, November 19, 1941.

submit to any Central Government for India in which the executive is directly dependent on parliamentary majority; (5) a free Government has many forms, and it should be framed in consonance with the conditions obtaining in India.

Mr. Jinnah and the Moslem League ask for: (1) in any future policy, negotiations and consultations, Moslems should be treated as a distinct unit; (2) no constitutional advance would be forced on them against their will; (3) Moslems are a separate national and cultural entity entitled to an equal share in the power and authority of Government; (4) the political status of Moslems cannot be determined by mere numbers; (5) the Governments in the provinces and the Centre were to be composed of coalition Cabinets and not homogeneous Cabinets, and the parliamentary majority rule based on the party system after the British model is not suitable to India.

In the Jinnah-Jawaharlal correspondence released in January 1940 the demands put forward by Mr. Jinnah for settlement with the Congress were the following: (a) the Moslem League should be taken as the only authoritative and representative organisation of the Moslems of India; (b) the Congress is to reach an agreement with the Moslem League with regard to minority problems, and subsequently to the agreement the Congress and the Moslem League could evolve an agreed formula for the demand of a declaration by the British Government. Pandit Jawaharlal laid down as the basis for settlement with the Moslem League that the recognition of India's independence and the right of India to frame her own constitution should be made and that the Moslem League was an important and influential organisation of Moslems and not the only authoritative organisation of Moslems. These two points of view can hardly be reconciled.

The Congress insisted on the demand for a constituent assembly elected on the basis of adult suffrage to frame India's constitution. This was first a cry for the

rally of anti-British forces in the country, but the Moslem League and the Liberal Federation and many other political parties were opposed to the constituent assembly on universal franchise. The Congress toned down its demand to satisfy the Moslem League. A resolution was adopted by the Congress Working Committee at its Allahabad meeting in November 1939 assuring "the accepted minorities" that their rights would be protected and that in the event of some matters relating to minority rights not being mutually agreed to, they could be referred to arbitration. The Congress conceded that the constituent assembly could be elected on the basis of the existing separate electorates if the minorities so desire and that the number of members in the constituent assembly should reflect their numerical strength. Explaining the Congress position in the matter, Maulana Abul Kalam Azad, the Congress President, observed in a statement in April 1940: "The Congress does not want to dictate its own terms to others. It admits the fullest right of the minorities to formulate their own safeguards. It has no hesitation in admitting the right of the Moslems to determine their own method of safeguarding their rights and interests through their representatives. It only wants the recognition of a correct and democratic method of approach to the problems. The recognised minorities can send their representatives to the constituent assembly through separate electorates, if they choose to do so. So far as the settlement of their problem is concerned, it would not depend on the vote of the majority."

The Azad Moslem Board

The Azad Moslem Board is the rival organisation to the Moslem League. The Board is dominated by the nationalist Moslems working in close co-operation with the Congress Party. It opposes the Pakistan movement and holds that any proposal which detracts from the federal unity of India is detrimental to the larger interests of the

country. It takes its stand on the principle of self-determination and on the method of deciding India's constitution in a constituent assembly. To the Azad Board "India, with its geographical and political boundaries, is an indivisible whole" and "it is the common homeland of all the citizens who are joint owners of its resources." The Board considers every Moslem an Indian, and, in its opinion, "Moslems owe equal responsibility with other Indians for striving and making sacrifices to achieve the country's independence". The all-India Azad Moslem Conference held at Delhi on the 30th of April 1940 declared unequivocally that "the goal of Indian Moslems is complete independence along with the protection of their religious and communal rights."

When Mr. Jinnah pressed that the Moslem League should be recognised as the only authoritative organisation of Moslems for the opening up of negotiations with the Congress the Azad Moslem Conference passed a significant resolution at its Lahore session on the 7th of November 1939, that if the demand for the recognition of the Moslem League was the only hitch in the way of national unity, the nationalist Moslems had no desire to stand in the way, provided Mr. Jinnah and his associates were prepared to fight the battle of India's freedom shoulder to shoulder with their non-Moslem brethren. The Moslem League could not accept the offer as Mr. Jinnah seems not interested in the establishment of a democratic State in India. The Azad Moslem Conference claimed that the number of Moslem members of the Congress was far greater than the total membership of the Moslem League, and there are other Moslem organisations such as Jamait-ul-Ulema and Majlis-i-Ahrar which are very powerful and work hand in hand with the Congress. The all-India Momin Conference declared that the Moslem League had no right to speak and act in the name and on behalf of the nine crores of Indian Moslems, and the Momins are more with the Congress than with the Moslem League.

The Hindu Mahasabha Party

In Indian politics, the Hindu Mahasabha acts as the counterblast to the Moslem League. In the first elections to the provincial legislatures under the Reforms Act of 1935, the Hindu Mahasabha as a party was not in the field. It may be said that the Hindu Mahasabha has passed through two phases of existence: under the leadership of Pandit Madan Mohan Malaviya the Hindu Mahasabha was tied to the Congress in respect of political work, but it fought hard to safeguard the rights of Hindus and organise them for the vindication of their culture; under the leadership of Mr. V. D. Savarkar the Hindu Mahasabha drifted away from the Congress, and became organised to secure the ascendancy of Hindu culture and traditions in political and non-political spheres of work. It gained strength amongst the Hindus in proportion as the Moslem League became a frankly reactionary communal organisation. The temperature of communalism stood high in Indian politics. The Mahasabha tried to imitate the Moslem League in organising the Hindus on a political plane different from the Congress, and sought to interfere in the political sphere for the assertion of the supremacy of Hindus in Indian politics. The League and the Mahasabha are the two communal organisations running at a tangent and fighting for a share in political power. To appeal to the Hindus or Moslems as religious communities on political matters is obviously harmful to the cause of nationalism. It shows undoubtedly the mediaeval attitude of mind. The present policy of the Mahasabha favours electoral contests with the Congress; like the Moslem League, it insists that the future constitution of India, to be acceptable, should have previous sanction of the Mahasabha; it requires that any interim constitutional scheme shall be judged by the strength of Hindu representation in the counsels of Government in keeping with the proportion of the Hindu population; it does not look upon Dominion Status as the

ultimate goal but insists upon it as an immediate step towards the final goal of independence.¹

The Mahasabha and the League have not till now taken part in direct action for the furtherance of their political programme, although both of them have occasionally threatened such a course to make their organisations impressive and popular. Both are *bourgeoisie* organisations intent on safeguarding the rights and privileges of the middle classes; both stand for private property rights; both are against launching any agitation against the Rulers of Indian States, rather they favour close co-operation with them; both of them favour the British connection.

The ascendancy of both Hindu Mahasabha and Moslem League is traceable to the Communal Award which fashioned the composition of the legislatures of the country; it strengthens the virus of communalism in Indian politics. The Communal Award was principally opposed by the Hindu Mahasabha on the following grounds:² (1) it is against the principles of democracy and cuts at the very root of Indian nationalism; (2) it retains and extends the evil of separate communal electorates which is fatal to representation upon a national basis; (3) it introduces the system of statutory majority and statutory minority which is a negation of responsible democratic government; (4) it prevents the free formation and grouping of parties in the legislature on the basis of social and economic programmes; (5) it has split up the body politic and the electorate into numerous sections and groups; (6) it is unfair to the Hindus in the provincial legislatures of Bengal, Assam and the Punjab where they have been allotted fewer seats than their population strength entitles them to; (7) it gives Europeans, particularly in Bengal and Assam, excessive weightage of representation at the expense of Hindus.

¹ The resolution of the Working Committee of the all-India Hindu Mahasabha in Bombay, November 1939.

² Resolution of the Calcutta session of the all-India Hindu Mahasabha in December 1939.

Communal riots and communal utterances of the Moslem League leaders strengthened the Hindu Mahasabha movement; they also forced many Congress men to devote their energies to the consolidation of the indivisible unity of India which was denied by the Moslem League stalwarts. Mr. K. M. Munshi who was the Home Minister in the Congress Cabinet of Bombay 1937-39 resigned from the Congress Party in June 1941 to start the Akhand Hindusthan front. The front, in Mr. Munshi's opinion, need not be an organisation; it is only a common platform evolved by different parties which work for the internal security and indivisibility of India. Mr. Munshi resigned from the Congress primarily because he could not agree with Mahatma Gandhi's injunction that Congress men who favoured violent resistance by way of self-defence must go out of the Congress and that Congress men should have nothing to do with gymnasia where training in violent resistance was given. But with Mr. Munshi, organised resistance in self-defence is a paramount duty. On coming out of the Congress he preached the message of Akhand Hindusthan throughout India and obtained good support in the nationalist press.

The War Situation

The War brought about a new political situation in the country. It involved the resignation of the Congress Ministries and suspension of constitutional changes of far-reaching character. The Indian National Congress clung to its demand for the unequivocal declaration of complete independence and asked for, as an immediate step, a provisional National Government at the Centre commanding the confidence of all the elected elements in the Central legislature and securing the closest co-operation of responsible Governments in the provinces. Such a demand was put forward by the Congress Working Committee at its New Delhi session on the 7th of July 1940, and it was endorsed later by the all-India Congress Committee at its

Poona session in 1940. But the all-India Congress Committee at its Bombay meeting on the 15th of September 1940 withdrew the Delhi resolution as "the decision of the British Government shows that they will impose their will upon India." The Congress refused to extend co-operation to the Government unless on the basis of declaration of complete independence and the installation of a National Cabinet in the Centre as a transitory measure, the future Indian constitution being prepared by a constituent assembly elected on the basis of adult franchise.

The basic demand put forward by Mr. Jinnah on behalf of the Moslem League was that "no commitments will be made with regard to the future constitution of India or any interim settlement with any other party without our approval and consent."¹ In the scheme announced by the communique of Government, 21st of July 1941, Sir Sultan Ahmed was appointed a member of the expanded Governor-General's Council and Sir Sikander Hyat Khan (Chief Minister, the Punjab), Mr. Fazlul Huq (Chief Minister, Bengal), Sir Muhammad Saadulla (Chief Minister, Assam), the Nawab of Chattari, and Begum Shah Nawaz members of the National Defence Council without reference to or knowledge of the leader and executive of the organisation and contrary to the decision of the Moslem League and its policy. The Working Committee of the Moslem League at its Bombay session in August 1941 called upon the members to resign and authorised Mr. Jinnah to take necessary disciplinary action against those who declined to tender resignations. The Committee criticised the Governor-General for the formation of the Defence Council and the expansion of the Governor-General's Council behind the back of the leader of the Moslem League. Sir Sultan Ahmed and Begum Shah Nawaz, however, refused to obey the mandate of the Moslem League. The Moslem League is pursuing a policy of non-embarrassment to the Government.

¹ Mr. Jinnah's letter to His Excellency Lord Linlithgow, dated New Delhi, February 6, 1940.

The Hindu Mahasabha has urged the thesis that the Congress has no right to represent Hindus and that no Hindu-Moslem pact would be binding on Hindus unless approved by the Hindu Mahasabha.¹ The Mahasabha has pushed the demand for a National Government, but it is prepared to co-operate if the formation of the National Government is delayed, and it does not propose any disciplinary action against any of its members joining the Governor-General's Council or the Defence Council or any other governmental organisation. The Mahasabha moves on the road to co-operation, and in political creed it follows the footsteps of the Liberal Federation, although its political mission is often subordinated to the protection and promotion of the Hindu race, Hindu culture and Hindu civilisation.

The National Liberal Federation extended general support to the plan of constitutional reform adumbrated at the non-Party Conference under the leadership of Sir Tej Bahadur Sapru. The non-Party Conference at its Delhi session in February 1942 urged the immediate adoption of the following scheme of reform: (a) a declaration that India shall no longer be treated as a dependency to be ruled from Whitehall and her constitutional position and powers will be identical with those of the other self-governing units of the British Commonwealth; (b) during the period of the war the Governor-General's Executive Council shall be reconstructed as a truly National Government functioning on the basis of joint and collective responsibility and consisting entirely of non-officials enjoying public confidence, subject to responsibility to the Crown; (c) the right of India to direct representation through persons chosen by the National Government in all Allied War Councils, wherever established, and at the Peace Conference, should be recognised; (d) the National Government should be consulted in all matters precisely on the same footing and to the

¹ Resolution of the Working Committee of the all-India Hindu Mahasabha in May 1938 at Nasik.

same extent as His Majesty's Government consult the Dominions.

The Position in Bengal

In Bengal, before the elections to the reformed provincial legislatures under the Constitution Act of 1935, the political parties were functioning on lines different from those in the other provinces. Bengal was deeply stirred by the Communal Award. In 1936 Bengal Hindus submitted a memorial to Lord Zetland, Secretary of State for India, for the revision of the Communal Award. The feelings of Hindus in the province against the Award were so deep that even the Bengal Provincial Congress Committee which had long maintained a non-committal attitude on the Communal Award expressed sympathy with the objects of the Town Hall meeting held on the 15th of July 1936 under the presidency of Poet Rabindranath Tagore to request the Secretary of State for India to take action under Section 308 (4) of the Constitution Act of 1935 for the purpose of remedying the wrongs inflicted on the Hindus of Bengal by the Award. The demonstration on the part of Hindus provoked a counter-meeting by Moslems held in the Town Hall on the 2nd August 1936 under the presidency of Sir A. H. Ghuznavi. The Secretary of State for India replied that there could be no alteration of the Award except with the consent of the communities affected. There was an attempt to compose the differences between the all-Bengal Proja Samity and the Bengal Provincial Moslem League. The Proja Samity in Bengal was, in fact, a Moslem organisation, although its nomenclature does not commit the Samity to communal membership. No such agricultural party in any other province contested the elections to the provincial legislatures under the Act of 1935. Before the elections, no settlement between the two Moslem organisations took place. The Krishak Proja Party was closely allied with the Congress Party on ideological grounds. Accordingly, the three political parties

fought the elections in Bengal, *viz.*, the Congress Party, the Krishak Proja Party, and the Provincial Moslem League Party. The Congress Party did not contest any Moslem seat, and this was principally because of ideological affinity with the Krishak Proja Party which was peculiarly a Bengal organisation. The non-Congress Hindus fought on individual tickets, and they formed themselves into a Nationalist Party in the legislature after the elections. Before the formation of the Bengal Cabinet in 1937 there was a coalition of the Krishak Proja Party and the Moslem League Party, but a section of the Krishak Proja Party continued to function as an Opposition Party.

The principal objects of the Nikhil Baṅga Proja Samity were the following: (1) to press for full responsible government with effective safeguards for Moslems; (2) to protect the political and religious rights of Indian Moslems; (3) to promote friendship and union between Moslems and other communities; (4) to abolish the Permanent Settlement; (5) to amend the Bengal Tenancy Act to vest proprietary rights in the tillers of the soil; (6) to secure the repeal of repressive laws; (7) to work for free and compulsory primary education and removal of agricultural indebtedness; (8) to reduce the heavy cost of administrative machinery; (9) to protect and promote the Urdu language and script with proper safeguards for the development of the vernacular; (10) to take steps for the representation of Moslems and scheduled castes in the services. In this wise there was a long catalogue, and many good things were promised, but the list of aims clearly shows that it is a Moslem organisation and that there is an attempt to cajole extremist opinion in the country on certain economic questions. The Moslem League Parliamentary Board in Bengal also promised many good things, but not the abolition of private landlordism;¹ it principally asked for the

¹ "The promise of abolishing the Permanent Settlement overnight was a moonshine and false promise"—said Mr. Jinnah at a public meeting in Calcutta, January 3, 1937.

establishment of a Board of Secondary Education and amendments of the Calcutta University Act and the Calcutta Municipal Act in the interests of Moslems. But the programme of the League-Proja Coalition which was effected after the elections to form the Bengal Ministry touched principally on the following: instituting an Enquiry Committee for the Permanent Settlement; amendment of the Bengal Tenancy Act so as to transfer rights from landlords to ryots with a view to making the latter virtual owners of the land; removal of agricultural indebtedness; control of price of jute; repeal of repressive laws; solution of the problem of unemployment; reduction in the cost of administration; amendment of the Co-operative Societies Act; resuscitation of dead and dying rivers; free and compulsory primary education. This coalition party, in course of time, came under the dominance of the Moslem League organisation, as Mr. Fazlul Huq later adopted the Moslem League creed. The Opposition Krishak Proja Party maintained its existence, and Mr. Fazlul Huq after breaking with the Moslem League Party assumed leadership of the Krishak Proja Party. After the reconstitution of the Bengal Cabinet in December 1941, the Ministerial party came to be known as the Progressive Coalition Party, and Mr. Fazlul Huq issued a whip for the formation of an all-India Progressive Moslem League Party as a rival to the all-India Moslem League Party with the declared objective of "rescuing the Moslem League from the clutches of un-Islamic leaders before it is too late."¹

In Bengal, the evil effects of the Communal Award were pronounced. The discussion of public questions was tainted with a communal approach. The communal ratio in the Government services adopted by the Government of Bengal affected the impartial outlook of Government departments. But it is interesting to find that the Bengal legislature passed a resolution advocating the majority of

¹ Mr. Fazlul Huq's letter to the prominent Moslem Leaguers dated June 21, 1942.

appointments for Moslems with the effective support of the Congress Legislature Party. The decision of the Bengal Cabinet in the matter of service ratio was announced on the 22nd of June 1939 through a press communique. Its terms are recited to show the influence of the Communal Award on the working of party government. The Government of Bengal decided that the policy of future recruitment to the public services of the province would be directed to the attainment and maintenance, as far as possible, of parity in each of those services between the Moslem and non-Moslem communities in the province, and fifteen per cent of appointments by direct recruitment should be reserved for the scheduled castes (such reservation not exceeding thirty per cent of non-Moslem direct appointments). The basic formula can hardly be objected to. It must be realized however that this decision of the provincial Government directly prejudiced the position of the Hindus who on account of their superior educational attainments and larger number amongst the educated classes in Bengal had hitherto occupied a dominant place in the public services. The rider to the basic formula was this: to accelerate the due attainment of parity in case of some services where the number of Moslems is small, any excess over fifty per cent obtained by non-Moslems in the matter of promotions shall be counterbalanced by additional reservation for Moslems over and above fifty per cent in direct appointments to that service until parity in that service is reached, and the same principle of counterbalance by additional reservation will apply to the services where Moslems predominate. All this worked out adversely for Hindus. The communal feeling was so high in the province that even the adoption of "sree and lotus" as the emblem of the University of Calcutta came in for sharp criticism by the Moslems in the Bengal legislature, and the University had to modify the design of the crest. It showed the emergence of new communal forces in Bengal under the protecting wings of the Communal Award.

The Dacca Riots Enquiry Committee, presided over by Mr. Justice McNair of the Calcutta High Court, submitted its report in 1942, and observed that "there was a strong feeling among the Hindus of all classes that their influence was waning, and that they were being deprived unjustly of the fruits to which they were entitled and to which they had for many years been accustomed. The feeling of frustration grew with time." The Enquiry Committee gave the following reasons for the growth of the feeling of frustration amongst Hindus:

(1) Legislative attacks upon Hindus, such as the Bengal Tenancy Amendment Act (the majority of landlords being Hindus), the Bengal Agricultural Debtors' Act and the Bengal Money-Lenders' Act (the majority of creditors being Hindus), the Calcutta Municipal Amendment Act (the strength of Hindu representation being reduced). There was the draft Secondary Education Bill (the influence of the University of Calcutta where Hindus dominate being curtailed). (For correct appreciation of facts it must be stated that the Congress Party in the legislature fully supported the principles underlying these economic measures and generally voted with Government except on one or two minor amendments. It should also be borne in mind that in the Congress majority provinces such as Bihar and the U.P. the Congress Ministries consisting overwhelmingly of Hindu members were responsible for similar if not more advanced economic legislation which affected Hindu vested interests in those provinces).

(2) The reservation of service appointments in favour of Moslems.

(3) Propaganda through meetings. The Bhairab Conference in Pakisthan Park, January 1941, where Moslems visualised the establishment of a Moslem hegemony in Bengal caused consternation among Hindus.

(4) The interference of Government in the Dacca District Board elections for the purpose of evicting a

Hindu Chairman and of removing election disputes from the jurisdiction of civil courts.

(5) The charge by the Chief Minister against the Hindus of combining to inflate the census figures of 1941.

(6) The "unjustified interference" by Government in the "Murapara case" where Moslems claimed the right over a spot described as a mosque, situated in the compound of a Hindu house.

(7) The interference of Government in the Kulti disturbance cases.

Frankness requires it to be stated that communal feelings were very often the work of individual leaders. Communal legislation and communal propaganda were conducted by them in their own interests; they were not resorted to in obedience to any urge from the masses. The masses, Hindu and Moslem, could live in amity as they had done for many generations.

The general public in Bengal are not really communally minded. But the party leaders move on communal lines to maintain their leadership, and this is necessary under the terms of the Communal Award. The leaders of the Moslem League think in terms of Moslems only while the leaders of the Hindu Mahasabha who have acquired influence and importance in Bengal carry on their agitation through propaganda purely on communal lines. For instance, the Secondary Education Bill introduced by the Ministry mainly supported by the Moslem League-Coalition Party in Bengal (when Mr. Fazlul Huq was the Chief Minister and Education Minister) provided a common platform for carrying on a country-wide agitation on behalf of the Hindus in the name of Hindu culture which was being threatened with extinction. The Committee appointed by the University of Calcutta to report on the draft Secondary Education Bill opposed the creation of a Board under the control of Government and preferred a Board academic in its character and outlook, "which will

work under the general, but not meticulous, control of the Senate of the University and be in close touch and ready understanding with it." The Bengal Cabinet wherein the Moslem League dominated resigned in December 1941, and a new one was formed with the support of the non-official Congress Party, led by Mr. Sarat Chandra Bose. In less than six months the new Cabinet brought forward a new Secondary Education Bill creating a Board without disturbing the principle of communal representation and without recognising the control of the University of Calcutta. The all-Bengal agitation that was started was hushed into silence. The Press remained indifferent; the platform ceased to reverberate with protests. All this eloquently makes for the Fascist organisation of parties to establish personal dictatorship, as distinct from democratic emphasis on issues and principles. This is unfortunate, so far as the party system in India is concerned.

The parties in India should discard both scepticism and dogmatism, because "truth is neither completely attainable nor completely unattainable, it is attainable to a certain degree, and that only with difficulty." Democracy needs a wide diffusion of two qualities: self-reliance of the population, and self-restraint of the ruling party. "Every man and woman in a democracy should be neither a slave nor a rebel, but a citizen, that is, a person who has, and allows to others, a due proportion, but no more, of the governmental mentality." If the population is submissive and prefers to follow a vigorous leader into dictatorship, it digs the grave of the parties that can meet and discuss in Parliament and follow an agreed formula. In India political parties are degenerating into fanatical factions where "each hypnotised automaton feels that everything most sacred is bound up with the victory of his side, everything most horrible exemplified by the other side." This fanaticism which is partly emotional and partly intellectual needs to be combated.

CHAPTER VII

THE BACKGROUND OF MOSLEM AWAKENING

Moslems ruled in India for over 700 years before the battle of Plassey. They came to India as invaders but made the country their own. They were absorbed in her population; they introduced a new culture and were also in their turn influenced by the culture and civilization of Hindusthan. Their fury of iconoclasm and of proselytisation subsided in time. The Pathans and the Moguls settled down to build mighty empires in India and ruled them for centuries not merely by the sword but also by following the policy of appeasement and the principles of good government. They dealt out justice, equity and fair play to the governed and gave them protection against internal troubles and external invasions. Hindus and Moslems borrowed each other's manners and customs, and at least the upper classes in society developed a new Indo-Saracenic civilization which made an abiding impression on the life of the people and survived Moslem rule in India. Moslems made great contributions to the domain of art and music of the land of their adoption. The Indo-Saracenic architecture is one of the noblest products of Hindu-Moslem contact and reciprocity. It is true that during these seven hundred years of Moslem rule there were many instances of religious intolerance of the worst type which had left bitter memories. But it is to be noted that from the middle of the sixteenth century onwards when the Great Akbar came to the throne the two communities began to live in peace and amity. Akbar's policy of religious tolerance and of friendliness towards Hindus attracted their imagination and gave them a sense of security and equality with Moslems as citizens. The short-sighted policy of some of his successors, however,

alienated them and directly contributed to the raking up of the feelings of enmity and suspicion which were removed by Akbar's policy of the remission of the *jizya* and the tax on Hindu pilgrims, the grant of permission to Hindus to build new temples and to repair the old ones and the employment of a large number of Hindus in positions of trust and responsibility as commanders of the army, revenue officers and even as provincial governors. The early Moslem invasions of India under Muhammad of Ghuzni and Muhammad Ghorī might have been prompted by religious motives; the accounts of aggressions by Chengiz Khan and Timur might abound with horrors of religious persecutions, and destruction and desecration of many a sacred shrine of Hindus; but there were instances in Moslem rule to show that Hindus were allowed to carry on the worship of their Gods and Goddesses in the very heart of Delhi and in its neighbouring areas such as Muttra and Brindaban; there were royal grants to Brahmins for educational purposes; there was undisturbed enjoyment of lands endowed by Hindu Kings or Chiefs for religious or charitable objects.

In fact, with the efflux of time Hindus and Moslems became so reconciled to each other that the Moslem Kings and the Hindu Rajas freely recruited their soldiers from both communities; and their combined army under generals of either community often went out to oppose common enemies of the Empire. The court of the great Moguls became an epitome of Hindu and Moslem culture in which soldiers, statesmen, scholars and musicians of both communities occupied honourable positions. Even Aurangzeb who deviated so much from the policy of religious toleration of Akbar and Jehangir depended on the help of Rajput generals like Maharaja Yasavanta Singh and Raja Jai Singh for the extension of his possessions and the maintenance of his supremacy in the distant parts of the Empire. In the Deccan the Adil Shahi and the Kutub Shahi Kings of Bijapur, Golconda and Ahmednagar also

freely employed Marathas as soldiers and revenue officers. Akbar's policy of religious toleration bore fruitful results and converted the brave Rajputs from the determined enemies to the devoted allies of the Moguls. This policy reached its perfection in Prince Dara Shiko's laudable attempt to bring about a cultural blending between Hindus and Moslems with the help of a number of Sufi scholars and the study of Hindu philosophy and religious literature. As great patrons of learning Moslem rulers encouraged Hindi, Bengali and Marathi literature. Birbal, one of the jewels of Akbar's court, enriched Hindi literature by his writings. Abdur Rahim Khan-i-Khanan, one of Akbar's Ministers, was a prolific writer of Hindi poems, which are still recited in Northern India. Akbar got the great Hindu epics, the Ramayana and the Mahabharata, translated into Persian. The Bhagabat Geeta, the Yoga Vasistha and other Sanskrit works were translated into Persian by the orders of Prince Dara Shiko. The Bengali language owes its literary status largely to the encouragement and patronage of some of the Moslem Kings of Gour. Coming in contact with Hindi which has Sanskrit as its basis Urdu (which was originally a camp language and used to be spoken by the Moslem soldiers, most of whom came from outside India and were equally ignorant of Sanskrit or Persian or Hindi) soon developed to be the language of the cultured classes in India, Hindu and Moslem, and became a fine literary medium.

Meeting of Rama and Rahim

Speaking of the mutual influence of Hinduism and Islam the authors of *The Communal Triangle* say: "Clashes were there, but the waters of life were rounding them and the "blooming buzzing confusion" was getting a new integration. Men arose on all sides who could think in terms commensurate with the new environment. The tendency was so universal that even the intellectual

renaissance that preceded the rise of the Maratha Power did not escape its influence.”¹

The austerity of the monotheistic creed of Moslems was distinctly impressed upon the minds of the prophets, Kabir, Nanak and others. The worshippers of *Dattatraya* or the incarnation of the Hindu Trinity often clothed their God in the garb of a Moslem faqir. The same influence was at work with greater effect on the popular mind in Maharashtra, where preachers, both Brahmin and non-Brahmin, were calling the people to identify Rama with Rahim, and ensure their freedom from the bonds of formal ritualism and caste distinctions, and unite in common love of man and faith in God.²

The debt was not one-sided. Islam penetrated into Hindu thought in a variety of ways. Even if we ignore the influence of Islamic thought on the development of the philosophies of Shankar and Ramanuja, we can hardly minimise the ideological ferment that the meeting of Rama and Rahim created, and it sought numerous and persistent outlets. Kabir and Nanak, Tukaram and Chaitanya, they all testify to the creative power of the co-mingling of the two religious thoughts. Thus, on the philosophical heights of mysticism, where man wrestles with the problem of his relation to the universe, the Hindu and the Moslem met on common ground. The impulse of that meeting spread to the broad masses of Indian humanity and made them a single people.³

It is necessary to mention all this to show how the two communities stood with reference to each other in the pre-British period. The communal tension to-day, whether spontaneous or partly inspired, is undoubtedly a source of great worry to those who want Indians to be

¹ “The Communal Triangle in India” by Asoka Mehta and Achyut Patwardhan, p. 15.

² Ranade: *Rise of the Maratha Power*, pp. 50-51.

³ “The Communal Triangle in India” by Asoka Mehta and Achyut Patwardhan, pp. 15-16.

united into one nation and are anxious to see India occupying her legitimate position amongst the free countries of the world. It is not possible to appreciate the difficulties that stand in the way of her constitutional advancement or hamper the working of parliamentary democracy in India without sympathetic understanding of the view-points and political ideologies of these two great communities constituting the Indian nation. The Congress has always claimed to speak on behalf of the entire nation, but this claim has of late been challenged by the Moslem League. In order, therefore, to appreciate fully the problems that confront the Indian politicians as well as the British nation as rulers of India, it is desirable to study the history of the origin and development of the great political organisation of the Moslems and to make a dispassionate analysis of its proposals on behalf of that community. These problems are inseparably connected with the working of the Indian political constitution, and on their solution will depend largely the political future of this country.

The Mogul System

The Mogul system of administration, well established and elaborate as it was, required the help of a large number of officers, both civil and military, forming a great hierarchy, who ruled the country on behalf of the Great Mogul. The vast majority of these officers were Moslems holding actual or nominal rank in the army consisting mostly of Moslem soldiers recruited to the service of the Empire either from the various Islamic tribes settled in India or from across the North-Western frontiers of the country. This system of army recruitment and of distribution of civil and military offices provided great opportunities to adventurous and ambitious Moslems who came to India in search of fortune. Through meritorious services to the rulers these officers could often rise from humble beginnings to positions of great trust and responsibility. Their attachment

was more personal to an Emperor, or to a Prince, or to a nobleman occupying high office and enjoying confidence of the ruler, than to the cause of the Mogul Empire in Hindusthan. The system however filled the court and the country with influential Moslems who for generations had occupied responsible offices under Government, wielded considerable power and secured for themselves large jagirs or royal grants for their own living and for maintenance of the army under their command. These officers and nobles had in their turn a large number, both Hindus and Moslems, attached to them, and they became important units in the bigger order of Moslem officialdom and nobility. They supported, served, intrigued against or opposed the reigning Monarchs according to their own interest, convenience, or circumstances in which they were placed at a particular moment. They formed the bulk of the Moslem nobility and gentry in the country. They encouraged art and literature, maintained madrassahs and makhtabs, endowed mosques and other religious and charitable institutions according to the rules of Islam. As patrons of art and literature these families supported a large number of Arabic and Persian scholars and helped religious preachers of their own community with liberal grants. The primary source of the wealth, influence and prestige of these Moslem families was Government service, imperial grants, and the ranks they occupied in the courts either of the Emperor at Delhi or of his viceroys in different parts of the Empire. Thus, unlike the British officers, these Moslem officers under Mogul rule occupied a more permanent position in the State, and had a hereditary stake in the country, a status in society and an obligation to the people. With the fall and disintegration of the Mogul Empire, to which the intrigue and mutual rivalry of some of the leading nobles directly contributed, these Moslems also suffered in fortune and influence. A handful of them did succeed in carving out principalities for themselves but most of them having lost their official position gradually

passed into oblivion. But it took many years before they were actually obliterated from the country or became merged in the masses.

British Ascendancy and Influence

The battle of Plassey brought about the downfall of the last independent Nawab of Bengal. Mirzaffar, the central figure in the conspiracy against the House of Alivardi Khan, was placed on the *masnad* of Murshidabad with the help of British arms and played the puppet Nawab for a brief period. Mir Kasim who was installed in the place of Mirzaffar by the same agency did not prove friendly to the British and was removed to make room for old Mirzaffar again. With the granting of the Dewani to the British by Emperor Shaha Alam in 1765 the revenue administration of the province passed into the hands of the East India Company and their agents. The police administration was, however, left to the descendants of Mirzaffar for a few years more till the Nawab was gradually divested of all his powers and administrative duties and was reduced to the position of an annuitant. The Sadar Dewani Adalat and the mint were soon after transferred to Calcutta, and thus the entire administration of the province came gradually under the control of the British and was anglicised. The final blow to the old system was dealt when Persian ceased to be the court language, and English was substituted in its place. British jurisprudence and British procedure were then introduced in the courts of law in place of the system and principles of law sanctioned by the Sariat. This threw out of employment a large number of Moslems who having lost the avenues of military employment had been depending entirely on judicial and revenue work under the East India Company for their living. Knowledge of Arabic and Persian no longer qualified the one for employment into Government service or as an educationist. The system of education also underwent

rapid transformation. The Government of Warren Hastings encouraged and provided for the teaching of oriental languages such as Sanskrit and Persian, but it did not make any arrangement for the imparting of religious instruction. Education under the British Government was completely secularised. This definitely discouraged Moslems from taking advantage of the new system of education. They preferred to continue their own system and to stick to their own educational institutions, most of which were attached to mosques and were supported from private funds or lands granted by the Moslem Government of the country or landlords who wanted to encourage education. There were a large number of *aimas* or grants for encouraging and supporting Moslem educationists who freed from the cares of earning their living could devote themselves to the vocation of teaching and carry on their duties of imparting education peacefully. These grants were mostly revenue-free or paid only a nominal amount as rent or revenue. The East India Company with certain exceptions resumed these lands without any consideration of their effect on the social, educational, religious and economic life of the community. The whole procedure was a summary one, and it was difficult, and in the majority of cases impossible, to prove by production of the original orders whether a particular grant was valid or not. This led to the confiscation of a large number of grants affecting seriously a considerable section in society, and resulted in the closing down of many madrashas and maktabas and other charitable institutions. The resumption proceedings brought about financial ruin to a section of the community who had hitherto enjoyed affluence or at least financial independence and occupied useful positions in society.

Sir William Hunter in his book *The Indian Mussalmans* says: "At an outlay of £800,000 upon the Resumption proceedings an additional revenue of £300,000 a year was permanently gained by the State, representing a capital at five per cent of six millions sterling. A large part of this

sum was derived from lands held rent-free by Mussalmans or by Mahomedan foundations. The panic and hatred which ensued have stamped themselves for ever on the rural records. Hundreds of ancient families were ruined, and the educational system of the Mussalmans who were almost entirely maintained by rent-free grants received its death blow. The scholastic classes of the Mahomedans emerged from the eighteen years (1828-1846) of harrying absolutely ruined . . . Since then the profession of a man of learning, a dignified and lucrative calling under native rulers, has ceased to exist."¹

Germes of Moslem Discontent

Moslems as a class preferred to stick to their old system of education and did not take advantage of the Western education and culture introduced by the new rulers of the country. The new system of education proved antagonistic to the traditions of Moslems, and they preferred to stand aloof. Their attitude was one of sullen discontent rather than of active hostility to the British. Mr. E. C. Bailey, Secretary to the Home Department of the Government of India, writing on this subject says: "Is it any subject of wonder that they (Moslems) have held aloof from a system which, however good in itself, made no concession to their prejudices, made in fact no provision for what they esteemed their necessities and which was in its nature unavoidably antagonistic to their interests and at variance with their social traditions?" This attitude of Moslems, however justified, did no good to them. They failed to recognise that the Mogul Empire had ceased to exist nearly three quarters of a century before the East India Company began to interfere with the educational system of the country and that in the meantime the Marathas and the Sikhs were ruling practically the whole of the area that once comprised

¹ "The Indian Mussalmans" by W. W. Hunter, pp. 185-186.

the Empire of Aurangzeb. The descendants of the Great Mogul were at the mercy either of some Moslem nobles or of captives of the Maratha chiefs in the Mogul palace at Delhi till one of them was rescued from that position in 1803 by the British General, Lord Lake. Moslems should have realised the fact that there was little or no prospect of the Moslem Empire being revived with all its cultural patronage and facilities for the followers of Islam. But they failed to do so. Their pride as the ex-ruling race and conquerors of India stood in their way. The result was that they gradually sank into poverty and oblivion. Sir William Hunter says: "They complain that they who but yesterday were the conquerors and governors of the land can find no subsistence in it to-day."¹ He adds: "It is not that they have ceased to retain the entire State patronage, but they are gradually being excluded from it altogether. It is not that they must now take an equal chance with the Hindus in the race of life but that at least in Bengal they have ceased to have a chance at all. In fact, it is a people with a great tradition and without a career".² He further adds: "A hundred and seventy five years ago it was almost impossible for a well born Mussalman in Bengal to become poor; at present it is impossible for him to continue rich."³

In describing the miserable condition of the descendants of these Moslem nobles the same author says: "At Murshidabad a Mahomedan Court still plays its farce of mimic State, and in every district the descendant of some line of Princes sullenly and proudly eats his heart out among roofless palaces and weed-choked tanks . . . Their ruined mansions swarm with grown-up sons and daughters, with grand-children and nephews and nieces, and not one of the hungry crowd has a chance of doing any thing for himself in life. They drag a listless existence in patched

¹ "The Indian Mussalmans" by W. W. Hunter, p. 152.

² *Ibid.*, p. 153.

³ *Ibid.*, p. 158.

up verandahs or leaky out-houses, sinking deeper and deeper into hopeless abyss of debt, till the neighbouring Hindu money-lender fixes a quarrel on them, and then in a moment a host of mortgages foreclose, and the ancient Moslem family is suddenly swallowed up and disappears for ever."¹ This picture is true regarding the miserable plight of the hundreds of Moslem families all over India. Families that once supplied the State with eminent administrators, soldiers and scholars, and used to be looked upon with pride and veneration, became now objects of pity and found themselves completely uprooted from the soil on which they had thrived so well for generations. Moslems as a community, and especially those who were well born and had seen better days, could not look to the progress of the British Raj in India with a friendly eye. They were too weak and disorganised to raise the banner of rebellion against their new masters, nor probably did they harbour any such desire, but neither they nor the British Government could forget that Moslems were the rulers of India only two generations before and that the descendant of the Great Mogul, though shorn of all power, influence and territorial possessions, still continues to occupy the fort of Shajahan at Delhi; the people of Hindusthan, Hindus and Moslems, felt unconsciously inclined to sympathise with this fallen greatness and show him all consideration that was due to his imperial lineage. This was the genesis of mutual misunderstanding and suspicion between the British administrators in this country and the Moslems. Both parties suffered from a sort of complex, and their mutual relations were influenced accordingly. Commenting on the British policy towards the Moslems in the pre-Mutiny period Professor Mohammad Noman, the author of *Muslim India*, says: "Indian Moslems rightly believed that the British were inspired by a spirit of revenge and fear against the Moslems whom they wanted to keep down in order to

¹ *Ibid.*, p. 155.

strengthen their hold on the country. Lord Ellenborough, the Governor-General in 1842, had adopted a policy of oppression and intimidation, all focussed against the Muslims."¹

Then came the Revolution of 1857. It started as a mutiny of the Hindu and Moslem soldiers in Northern India but ended as a general conflagration in which thousands of the civil population joined, some as active participator but the majority as passive sympathisers. The disturbance was put down by the British, and it was followed by a terrible reprisal against those who took part in the movement or were supposed to have any complicity in it, active or passive. But Moslems as a community suffered most. "In the stirring days of 1857", observe the authors of *The Communal Triangle in India*, "the Indian Muslims played a very prominent part. The rebellion however did not succeed, and the strong hand of the victorious British fell heavily upon Muslim nationalists. The pre-Mutiny policy of suppressing the Muslims was now carried out with such thoroughness that at the end of it we find the Muslims of India, a proud and brave people, reduced to the position of illiterate masses with their spirit broken and their pride humbled to the dust."² Sir Theodore Morrison says: "In 1857 came the catastrophe of the Mutiny, for which the English believed wrongly that the Muslims were mainly responsible; the phantom of the Moghul Emperor was abolished, the noble families which had followed his fallen fortunes were ruined or dispersed, and Delhi ceased to be a Moslem city. All over India Muslim civilisation was in evident decay. The Moulvis, the religious leaders of the people, from a mistaken loyalty to Islam, forbade their followers under pain or eternal damnation from acquiring the language of the Firinghis (Franks, i.e., Europeans). The Moslems were thereby

¹ "Muslim India" by Mohammad Noman, pp. 28-29.

² "The Communal Triangle in India" by Asoka Mehta and Achyut Patwardhan, p. 21.

excluded from all the liberal professions. For the public services a knowledge of English had now become indispensable; law, medicine, and engineering had been revolutionised by the introduction of European ideas and could only be studied to any purpose in English text books. While Bengalis, Hindus, Madrasis, and Marathas, inspired by the arts and science of Europe, were experiencing an intellectual and moral renaissance, the Moslems all over India were falling into a state of material indigence and intellectual decay."¹

Sir Syed Ahmad's Contributions

This was the state of the Moslems at the close of the Mutiny. They were disorganised, demoralised and sunk in poverty. They were unprepared to adapt themselves to the new order that had emerged out of the revolution and ill-equipped to take advantage of the educational and economic facilities offered by the post-Mutiny policy of the British administration in India under the Crown. At this juncture Syed Ahmad Khan appeared as their saviour. It was through his help and under his leadership that Moslems for the first time woke up from their slumber, and the dry bones of the community came to life again. He tried to dissuade them from taking part in the rebellion as far as he could, and it was he who in his well known pamphlet, *The Causes of the Indian Revolt*, gave the ideology of the rebellion, pointed out in forceful language and with unanswerable logic how this revolt was born of a feeling of exasperation and ignorance on the part of the people of this country, and described Government's failure to know what was passing through the public mind, and what were the grievances of the people. During the Mutiny he rendered valuable services to the British, suffered at the hands of the mutineers for helping Government and saving the lives of several Britons; so his loyalty to them was proved

¹ Quoted from "Muslim India" by Mohammad Noman, pp. 31-32.

beyond doubt. But his loyalty to his country and to the cause of his unfortunate community was still greater. He was actuated by a high sense of duty to the Moslems and of patriotism to his motherland, that prompted him on the one hand to advise the Moslems to shake off their conservatism regarding education, to take advantage of the Western system of education in order to qualify themselves for Government services and learned professions and on the other hand to plead strongly the claim of his countrymen to be associated with the administration of their country in a representative system of government. But he never approved of the idea of introducing in India the Western system of democracy which in his opinion was unsuited to the genius of the people, their composition and traditions. Though he advocated strongly Hindu-Moslem unity and described the two communities as the two eyes of a beautiful maid—India, Syed Ahmad Khan never supported the proposal of introduction of representative institutions in this country exactly on the British model which involved the rule of the majority, that is of the Hindus. Sir Syed Ahmad's views on representative government in India can best be gathered from his observations on the Central Provinces Local Self-Government Bill in 1883: "I am convinced that no part of India has yet arrived at the stage when the system of representation can be adopted, in its fullest scope, even in regard to local affairs. The principle of self-government by means of representative institutions is, perhaps, the greatest and noblest lesson which the beneficence of England will teach India. But, in borrowing from England the system of representative institutions, it is of the greatest importance to remember those socio-political matters in which India is distinguishable from England. The present socio-political condition of India is the outcome of the history of centuries of despotism and misrule, of the dominance of race over race, of religion over religion. Traditions and feelings of the people and their present economic and

political condition are in a vast measure influenced and regulated by the history of the past; the humanizing effects of British rule have not yet demolished the remembrance of the days of strife and discord which preceded the peace brought to India by British supremacy. India, a continent in itself, is inhabited by vast populations of different races and different creeds; the rigour of religious institutions has kept even neighbours apart, the system of caste is still dominant and powerful. In one and the same district the population may consist of various creeds and various nationalities; and whilst one section of the population commands wealth and commerce, the other may possess learning and influence. One section may be numerically larger than the other, and the standard of enlightenment which one section of the community has reached may be far higher than that attained by the rest of the population. One community may be fully alive to the importance of securing representation on the local boards and district councils, whilst the other may be wholly indifferent to such matters. Under these circumstances, it is hardly possible to deny that the introduction of representative institutions in India will be attended with considerable difficulty and socio-political risks. The system of representation by election means the representation of the views and interests of the majority of the population and, in countries where the population is composed of one race and one creed, it is no doubt the best system that can be adopted. But, my lord, in a country like India, where caste distinctions still flourish, where there is no fusion of the various races, where religious distinctions are still violent, where education in its modern sense has not made an equal or proportionate progress among all the sections of the population, I am convinced that the introduction of the principle of election, pure and simple, for representation of various interests on the local boards and district councils, would be attended with evils of greater significance than purely economic considerations. So long as differences of

race and creed, and distinctions of caste form an important element in the socio-political life of India, and influence her inhabitants in matters connected with the administration and welfare of the country at large, the system of election, pure and simple, cannot be safely adopted. The larger community would totally override the interests of the smaller community, and the ignorant public would hold Government responsible for introducing measures which might make the differences of race and creed more violent than ever."¹

Sir Syed Ahmad with the instinct of a born leader and the foresight of a statesman realised before others did the imperative need for furthering the educational facilities of the Moslem community and for inducing them to take advantage of those facilities with a view to qualifying them to take their proper place in the new order of things in India. He felt that Moslems had suffered much in excess of their complicity in the Indian Mutiny; it would therefore be unwise and undesirable for them to join any political movement against Government. This would, thought Sir Syed Ahmad, rouse further suspicion of Government against Moslems and afford Government another opportunity for oppression. "Agitation among the Muslims meant the raising of a rebellion and Sir Syed Ahmad was not prepared to run the risk."

Anxious to secure peaceful progress of Moslems, to rehabilitate their character and to clear all misunderstandings from the mind of Government, Sir Syed Ahmad refused Moslem co-operation to the newly formed Congress organisation. He disapproved of its policy which, according to him, was tending towards extremism and an attack on Government. He advised Moslems not to join the Congress and formed a different organisation called the Patriotic Association. Sir Surendra Nath Banerjea in his reminiscences *A Nation in Making* says: "The Mahamedan

¹ Quoted from "Muslim India" by Mohammad Noman, pp. 34-36.

community under the leadership of Sir Syed Ahmad had held aloof from the Congress. They were working under the auspices of the Patriotic Association in direct opposition to the national movement. Our critics regarded the National Congress as a Hindu Congress, and the opposition papers described it as such. We were straining every nerve to secure the co-operation of our Mahammedan fellow-countrymen in this great national work."¹ Thus the separatist tendency in Moslem public opinion was in evidence from the early days of the political movement in India. It cannot be denied that Sir Syed Ahmad was actuated by a sincere desire to safeguard the interests of the members of his own community and to protect them against further indignity and oppression. His apprehensions were genuine. He also wanted to provide against the rule of the majority in a purely democratic system. What he said sixty years ago is being practically repeated by the Moslem leaders and Moslem political parties and organisations to-day. This feeling was no doubt regrettable, and it stood in the way of fusion of the two communities into one nation. But as the most outstanding leader of his community Sir Syed Ahmad Khan was most competent to judge their needs, to interpret their views on important issues and to give expression to them on behalf of the Moslems of India.

In order to widen the educational facilities of Moslems and to impart training to Moslem students in the atmosphere of Islamic culture without ignoring the modern conditions and requirements of life, the M. A. O. College at Aligarh was founded at the instance of Sir Syed Ahmad and mainly through his help. This institution has developed into a Moslem University, and at present it plays an important part in the educational, political and cultural life of Moslem India. It has become the centre of Moslem educational renaissance and the nursery of Moslem political leaders with their new ideas and theories about the

¹ "A Nation in Making" by Sir Surendra Nath Banerjee, p. 108.

position and claims of the community in the Indian body politic.

There is no doubt that the establishment of the M. A. O. College at Aligarh and later of the Aligarh Moslem University made the community rapidly self-conscious. Within a generation it came to realise the position to which it had been reduced in less than 75 years. Members of the Moslem community began to feel that once they held sway over the major portion of India, but they had now sunk into ignorance and poverty, and the majority of them were not merely unemployed but also unemployable because of their lack of education and training. This roused them from stupor. They were determined to take their legitimate position in India's national life. Unfortunately, however, this awakening of Moslems led almost simultaneously to the rousing of their communal consciousness.

Moslems genuinely suffered from a sense of injustice and of gradual displacement from the position of vantage in all spheres of life. Educated Moslems began to cherish a strong sense of resentment. Aligarh as the seat of Moslem education, under the guidance of European principals and professors, became the centre of the movement for the safeguarding of Moslem interests, rights and privileges. The Hindi-Urdu controversy towards the beginning of the present century was the first manifestation of the movement. The proposal to substitute Nagri script for Persian in Government offices greatly upset the Moslems. In this they apprehended the substitution of more Hindus for Moslems in the public services and a further encroachment on Moslem culture. The proposal on the other hand was enthusiastically supported by the Hindu community; this incensed the communal tension. It is already noticed that in the wake of the nationalist movement there came simultaneously a religious revival all over the country. The movement appeared in different forms in different parts of India. It may be fittingly described as the religious manifestation

of national consciousness and an attempt on the part of educated India to appreciate its own culture with a view to restoring the self-respect of the people and training them through religious education and discipline to self-assertion against foreign domination, both political and cultural. The movement was mainly a Hindu one. The respect for the Vedas and the Bhagabat Geeta, the revival of some of the religious rites and ceremonies of the Hindus, the preservation of cows, *suddhi* or reconversion to Hinduism of those Hindus who had embraced Islam—these were some of the teachings and the outcome of the new Hindu religious movement which in the hands of political leaders like Dayananda, Tilak, Sradhananda and Madan Mohan Malaviya assumed a great political significance and became a creative force. Some aspects of the movement such as objection to the slaughter of cows, and demonstrations in honour of the memories of Hindu national heroes like Prithwiraj, Rana Pratap and Shivaji became soaked with political significance of a communal character, and even in the early days of the Congress movement they proved a handicap to national solidarity and in later years became a powerful factor in the creation of schism in our national life and in the perpetuation of the same. With the increase of our political consciousness also increased the communal tendency.

The Movement for Separate Electorates

It has been already stated that the communal feeling crystallised during the Bengal Partition agitation in 1906, and it found expression in the claim of the Moslem community for separate electorates in the Morley-Minto Reforms and in the formation of the Moslem League in 1906 by a resolution moved at the all-India Moslem Conference held at Dacca. The object of the Moslem League was outlined in the resolution proposing the formation of the League, and it ran as follows:—"Resolved that this meeting

composed of Mussalmans from all parts of India assembled at Dacca decides that a Political Association be formed, styled all-India Moslem League, for the furtherance of the following objects:—

(a) To promote, among the Musalmans of India, feelings of loyalty to the British Government and to remove any misconception that may arise as to the intention of Government with regard to any of the measures.

(b) To protect and advance the political rights and interests of the Musalmans of India and to respectfully represent their needs and aspirations to the Government.

(c) To prevent the rise among the Musalmans of India of any feeling of hostility towards other communities without prejudice to the other afore-mentioned objects of the League.”¹

It is a curious coincidence that both the Indian National Congress and the all-India Moslem League started their career with the good wishes of the representatives of the British Government in India. Lord Dufferin wanted the Congress to play Her Majesty's Opposition, so as to help Government to ascertain correctly the views of the governed or rather of the politically minded section amongst them, regarding Government's legislative and administrative measures. The Government of Lord Minto similarly encouraged and welcomed the formation of the Moslem League as a counterblast to the Congress, which had become too critical of Government measures, insistent on the claim of self-government for the Indian people, was constituted of persons who had been publicly advocating the boycott of British goods as a political weapon, and had on its roll members who were alleged to have sympathy with the extremist movement in politics.

In reply to the Address presented by the Moslem Deputation to Lord Minto urging the introduction of separate electorates for the community in the legislature

¹ Quoted from “Muslim India” by Mohammad Noman, p. 78.

under the Reforms Act of 1909 as well as in all local bodies, the Viceroy said: "You point out that in many cases electoral bodies, as now constituted, cannot be expected to return a Mahomedan candidate and that if by any chance they did so, it would only be at the sacrifice of such a candidate's views to those of a majority opposed to his own community, whom he would in a way represent, and you justly claim that your position should be estimated not merely on your numerical strength but in respect to the political importance of your community and the service it had rendered to the Empire. I am entirely in accord with you."

Moslems as a community had never identified themselves with the Congress, although some prominent individuals were always associated with it. The Moslem League gradually drifted away from the Congress, and the most prominent leaders of the community found their natural moorings in the more congenial atmosphere of the League. This attitude of the Moslems has to be studied in the background of the policy of *divide et impera* of the British Government. The British welcomed this separatist tendency of the Indian Moslems and did not view with approval any move to the strengthening of a united front. It cannot be denied that the policy of the rulers of the country greatly influenced the outlook of the Moslem leaders and often prevented them from viewing the national problems in their proper perspective. But it would be unfair to place the entire responsibility on the British Government or on the Moslem community. The gradual estrangement of Moslems from the Congress was largely due to a feeling of their inability to influence successfully the policy of the Congress because of the numerical inferiority of educated Moslems in that organisation. Moslems had misgivings that as they form less than one-fifth of the total population of India, their interests would not be adequately safeguarded in a purely democratic constitution on the British model which was aimed at and advocated by the

Congress. This distrust of and resentment against Hindus often received encouragement from the British administrators. The estrangement of Moslems from the Congress movement is also partially attributable to the absence of sympathy with Moslem public opinion about important political issues in the leaders of the Congress who, being mostly Hindus often approached the problems from their own points of view. Identification of the Congress with the Bengal Anti-Partition movement may be cited as an important instance of the failure to appreciate properly Moslem opinion which was still not very vocal.

The deputation about separate electorates which was suspected as "a command performance" waited on the Viceroy on the 1st of October 1906; that very evening Lord Minto received a letter from an official on the subject. In that letter it was said: "I must send Your Excellency a line to say that a very, very big thing has happened to-day. A work of statesmanship that will affect India and Indian history for many a long year. It is nothing less than the pulling back of sixty-two millions of people from joining the ranks of the seditious opposition."¹

Whatever the immediate justification might have been of the introduction of separate electorates for the Moslems it must be recognised that separate representation has, instead of bridging the gulf between the two communities, gradually widened it and done the greatest harm to the cause of Indian nationalism. It has rendered the working of parliamentary democracy difficult and joint responsibility of Ministers almost a nullity. They have to approach even important issues from the point of view of the community to which they belong rather than from that of the country or the nation. This has greatly added to the complexity of our political problems making their solution more difficult than ever. The demand for separate electorates gradually

¹ "India: Minto and Morley 1905-1910" by Mary, Countess of Minto, pp. 47-48.

gained greater momentum and it had to be formally recognised and accepted even by the Congress in 1916 in order to enable that body and the Moslem League to put forward a joint scheme of Constitutional Reforms. Separate electorates have now proved to be a dominant feature of the Indian Constitution, however much one may regret it.

Moslems and the League

Like the Congress the all-India Moslem League too was at its inception an organisation conceived, formed and controlled by persons belonging to the upper classes and the upper middle classes. During the first period its aims and objects were to promote amongst the Moslems of India a feeling of loyalty to the British Government and to remove any misconception that might arise as to the intention of Government with regard to any of their measures. The idea of the organisation was to protect and advance the political rights and interests of the Moslems of India through representation of their case to Government. The object of securing self-government for India was not yet in its programme nor did the League claim within its fold the Moslem masses. It was mainly an organisation to give expression to the views of the educated Moslems on questions of general interest to the community. But the time spirit was at work, and the Moslem League could not escape its influence in spite of the fact that its leaders were all pro-British and were inclined to preach loyalty to Government amongst its members. The Moslem community depended on British support and governmental assurance regarding the advancement of their communal interests and protection against infringement of their rights and privileges. But the first rude shock they experienced was the annulment of the Partition of Bengal which was repeatedly announced as a settled fact but was ultimately unsettled to the great disappointment and disillusionment of the Moslems of Eastern Bengal in particular and of those of India in general. They realised for the first time

the futility of depending entirely on the promises, assurances and patronage of a foreign Government in disregard of the need for a common stand and united front. The Moslem League had for a limited period only confined its aims and objects to the propagation of loyalty to the British Raj amongst Moslems and protection of their special interests regarding appointments to the public services and certain educational facilities; but it soon came under the influence of young Moslems with nationalist outlook and began to talk of self-government for India. The Balkan war in 1912 and Great Britain's indifference to the interests of Turkey were interpreted by the young nationalist Moslems as a clever move to get rid of the sick man of Europe. This roused the indignation of Indian Moslems, and the young Moslem student community all over the country including that of Aligarh was rudely disturbed. They publicly showed their sympathy with Turkey and collected funds to help her. A medical mission was sent to Constantinople under Dr. M. A. Ansari. The Ulemas who had already begun to take interest in the Indian Moslem political movement came forward to help the propagation of pan-Islamism and gave a great impetus to the pro-Turkish movement in the interest of the Khalifa, the religious head of the entire Islamic world. The Moslem Press in India, under the influence and leadership of men like Maulana Mohammad Ali, the editor of the *Comrade*, and his brother Maulana Shaukat Ali, the editor of the Urdu newspaper *Hamdard*, Maulana Abul Kalam Azad, the editor of *Al Hilal*, preached co-operation of the followers of Islam with Turkey in her distress and incidentally criticised the attitude of the British towards the Moslems both in India and abroad. "These mighty currents swept through the League and refreshed waters."

In 1914 came the great European War. Some of the young Moslems who had pro-Turkish leanings soon developed and displayed a pro-German attitude. "They dreamt of independence and planned their daring schemes." They

sent their emissaries to Kabul to meet and discuss their plan with the German and Turkish ambassadors and also to enlist the support of the Amir of Afghanistan against the British. Maulana Mahmood-ul-Hasan of Deoband, who planned the conspiracy, "dreamt of an independent Republic of India with Raja Mahendra Pratap as its first President."¹ The Maulana and his colleagues were arrested and interned, and so were Maulana Mohammad Ali, Saikat Ali, Azad, and Hasrat Mohani. "The Indian Mussalmans were awakened from their fifty year old slumber." The League could not escape the influence of this awakening. Its outlook became more national, and it gradually came under the influence and control of leaders like Mr. M. A. Jinnah, Mr. Mazarul Haque, Raja Saheb of Mahamudabad and others who were intimately associated with the Congress movement. H. H. Aga Khan severed his connection with the League at this stage. In 1913 the object of the League was amended to the "attainment, under the aegis of the British Crown, of self-government suited to India." The League also began to show inclination for greater co-operation with other communities in India, abandoning its previous exclusive attitude. The following resolution was adopted at its Lucknow session held in 1913:

"That the all-India Moslem League places on record its firm belief that the future development and progress of the people of India depend on the harmonious working and co-operation of the various communities and hopes that the leaders of both sides will periodically meet together to find a *modus operandi* for joint and concerted action on all questions of public good."

In 1913 Sir Ibrahim Rahimatoola in his presidential address to the League said: "Every one must recognise that no form of self-government is possible in India unless the two principal communities the Hindus and the

¹ "The Communal Triangle in India" by Asoka Mehta and Achyut Patwardhan, p. 33.

Muslims, are closely and conscientiously united. What can be a nobler aim, a loftier goal than to endeavour to secure India united? Once we become sincerely and genuinely united, there is no force in the world which can keep us from our heritage. Without such union the Indian will have to wait indefinitely for the realisation of their fondest hope. Instead of having differences and dissensions amongst ourselves at the present time on matters of remote realisation, I would earnestly appeal to all true sons of India to concentrate all their talents on the consummation of ensuring a united India; then we might well leave the future to take care of itself, full of hope and confidence."¹

Though the League changed its creed and supported the introduction of self-government for India under the aegis of the British Crown, it did not fall in line with the views of the Congress, *viz.*, colonial form of self-government for India.

The subsequent history of the Moslem political movement as represented by the Moslem League from 1915 to 1918, and by the Khilafat movement between 1921 and 1926, of the attitude of the Moslem leaders regarding the Royal Commission on the Indian Constitutional Reform in 1929, and at the Round Table Conferences in London between 1930 and 1932, the revival of the League under Mr. Jinnah in 1937-38, the reaction of the formation and working of the Congress Ministries in the Hindu majority provinces leading to a demand for Pakistan, the refusal of the League to join the proposed National Government at the Centre during the war, the attitude of the Moslem League to the Cripps proposals—all these have been referred to in appropriate chapters, and their repetition here seems unnecessary to complete the historical analysis of the political awakening of Moslem India. The Congress and the League are now the two most powerful organisations representing between them practically the majority of the politically conscious

¹ "Muslim India" by Mohammad Noman, p. 131.

section of the Indian population. Independence is their motto, and in their own way these two bodies have been under their respective leaders trying to achieve the same goal through different methods. Though talking of complete independence the Indian National Congress is desirous of shaping the constitutional machinery of self-governing India on the British parliamentary model; it is also anxious to maintain the unity of India as a political unit without refusing adequate safe-guards and protection to the principal minority community, the Moslems. The Moslem League, on the other hand, though equally keen on securing freedom from foreign domination, does not want to shape the Indian Constitution entirely on the British model because that entails a majority rule which the League is not prepared to countenance maintaining the theory that the Moslems are a separate nation and not a mere community. Reluctance on the part of Moslems to live under a non-Moslem Government is not merely a political creed but is said to be an article of faith, and this was the inspiration of the Wahabi movement in India in the sixties of the last century. The old ideal has now been given a new orientation in the Pakistan movement. The League is not prepared to recognise that cultural or political unity is essential for India to attain her full stature as an independent country. The expression Pakistan in its present context has not been defined up till now, and political India has no clear notion of its implications. It is, therefore, difficult to make any forecast regarding the effect of Pakistan on India as an independent country. But unlike the Congress leaders the protagonists of the Pakistan scheme may not be obliged to confine the limits of independent India within the Indian frontiers, and there may be a natural inclination on their part to extend the boundaries of Pakistan and join up with other Moslem countries outside India.

INDEX

Act of 1861—28, 29.
 Act of 1892—28, 31.
 Act of 1909—55, 60.
 Act of 1919—66, 75, 82, 97, 145, 360.
 Acton, Lord—118.
 Adil Shahi Kings—386.
 Advisers, non-official, the—246.
 Advisers, official, the—246.
 Afgan War—14.
 Ahmad, Sir Syed—23, 397, 398, 400, 401.
 Ahmed, Mr. Shamsuddin—264.
 Ahmed, Sir Sultan—376.
 Aimas—392.
 Air Force Act, the—116.
 Aiyar, S. Subrahmanya—21, 35.
 Akali Agitation—93.
 Akbar the Great—385, 386, 387.
 Aligarh Anglo-Mahommedan College—23, 401, 402.
 Alipur Bomb Case—48, 49, 85.
 Al Hilal—408.
 Ali, Mr. Nausher—263, 264.
 Ali, Moulana Mohammad—408, 409.
 Ali, Moulana Shaukat—408, 409.
 All Bengal Moslem League Conference (1937)—260.
 All Bengal Proja Samity—378.
 All India Federation—173.
 All India Speakers' Conference—251.
 All Parties Convention in 1928—130.
 Ambedkar, Dr. B. R.—244, 354.
 Amery, Mr.—108, 123, 137, 146, 150, 177, 250, 310, 369.
 Amir of Afganistan, the—409.
 Amrita Bazar Patrika, the—10, 196, 262.
 Andamans—257.
 Anderson, Sir John—189, 201, 261.
 Aney, Mr. M. S.—128, 144.
 Angora Assembly—77.
 Anglo-Irish Treaty of 1921—135.
 Announcement of August, 1917—180.
 Annulment of the Partition of Bengal—407.

Ansari, Dr. M. A.—408.
 Arbitration Tribunal—209.
 Arms Act, the—116.
 Army Policy, Post-Mutiny—13.
 Arya Samaj Movement—7.
 Asquith, Mr.—188, 193, 275.
 Association of Zemindars—32.
 Atkin, Lord—317.
 Atlantic Charter—127, 128.
 Attlee, Mr.—128, 197.
 Auckland Colvin, Sir—18.
 August Offer of the Governor-General (1940)—122-124.
 Aurangzeb—386, 394.
 Australia, Commonwealth of—104, 106, 119.
 Autonomy—50, 55, 63, 65.
 Ayer, Sir C. P. Ramaswami—155.
 Ayerst, Lieut.—38.
 Azad Moslem Board—371, 372.
 Azad, Maulana Abul Kalam—136, 217, 231, 371, 408, 409.
 Aziz, Mr. Syed Abdul—234.

B

Bailey, Mr. E. C.—393.
 Bajpai, Sir G. S.—108.
 Baldwin, Mr.—189, 191, 193, 274.
 Balfour, Mr.—275.
 Balfour formula—109.
 Balkan War—408.
 Bande Mataram—45, 46.
 Banerjea, Mr. Justice Gurudas—40.
 Banerjea, Surendra Nath—10, 14, 15, 18, 25, 26, 35, 41, 45, 46, 47, 51, 55, 57, 65, 73, 79, 80, 358, 400.
 Bardoli, Mr. Gopinath—225.
 Barisal Affair—47.
 Barisal Conference—45.
 Basu, Bhupendra Nath—35, 65.
 Beasant, Mrs.—7, 57, 64.
 Beaumont, Mr. Justice—329.
 Bengal—3, 35, 43, 45, 46, 48, 49, 55, 57, 58, 73, 76, 81, 82, 87, 207, 225.
 Bengal Army, the—13.
 Bengal Agricultural Debtors' Act, the—340.

- Bengal Anti-Communal Award Committee—253, 254.
 Bengal Hindu Sabha, the—357.
 Bengal Hindu Mahasabha, the—357.
 Bengal Local Self-Government Act of 1885—16.
 Bengal Money-lenders' Act, 1940—327.
 Bengal Ministry, the Communal Character of—258.
 Bengal Municipal Act of 1884—16.
 Bengal Non-agricultural Tenancy (Temporary Provisions) Act, 1940, the—330.
 Bengal Rural (Primary) Education Bill—93.
 Bengal Provincial Hindu Sabha—259, 357.
 Bengal Provincial Moslem League—378.
 Bengal Tenancy Act, the—30, 330.
 Bengal Coalition Ministry—263, 265.
 Bengal Tenancy Amendment Bill—77, 236, 245.
 Bengal Anti-partition Movement—406.
 Bengalee, the—10.
 Bengali-Bihari controversy—337.
 Berar controversy, the—156.
 Bevan, Mr. Stuart—156.
 Bhagabat Geeta—387, 403.
 Bihar Agricultural Income Tax Act, 1938, the—324.
 Bihar Landholders' Conference, the—263.
 Bihar and Orissa State aid to Industries (Orissa Amendment) Bill—247.
 Bihar Money-lenders' Act, 1938—325.
 Birbal—387.
 Birkenhead, Lord—85.
 Biswas, Babu Ashutosh—53.
 Black Bill, the—66.
 Blavatsky, Madam—7.
 Bobilli, Maharaja—94.
 Bombay Finance Act 1939—311.
 Bombay Presidency Association—18.
 Bonerjee, Mr. W. C.—19, 20, 21.
 Borden, Sir Robert—103, 105.
 Bonor Law, Mr.—275.
 Bose, Ananda Mohan—18, 35.
 Bose, Mr. Sarat Chandra—267, 351, 384.
 Bose, Subhas Chandra—77, 88, 224, 234, 355, 356, 357.
 Boycott—57, 69, 70, 82.
 Boycott of British goods—45, 46.
 Boycott of H.R.H. the Prince of Wales—74.
 Boycott of the Ministry—82.
 Boycott of the legislature—87.
 Bradlough—31.
 Brahma Samaj—5, 6, 7.
 Brett, Mr. W. B.—235.
 Bribery Commission, the—193.
 Bright, John—31.
 British Committee, the (of Indian National Congress)—30, 31.
 British Commonwealth of Nations—102.
 British Crown—11, 16.
 British Empire—31, 64, 107, 150.
 British Government—4, 19, 51, 52, 54.
 British Indian Association—10, 18, 32.
 British Parliamentary Institutions—5, 6, 25, 37.
 British Policy towards the Moslem in the pre-Mutiny Period—395.
 British Rule—11, 15, 36, 37.
 British War Cabinet—108.
 Burdwan, Maharajadhiraja Bahadur—77, 253.
 Burke—16.
 Butler, Mr.—290.
 Bux, Khan Bahadur Allah—224, 248, 249.
- ### C
- Cabinet—58, 59, 185, 188, 191.
 Cabinet Procedure in Bengal under the Act of 1935—279.
 Cabinet Responsibility—58, 255.
 Calcutta Corporation—84.
 Calcutta High court decision re: Rule 26 of the Defence of India Act in Habeas Corpus applications—316.
 Calcutta Industrial Exhibition, the—16.
 Calcutta Municipal (Amendment) Bill, 1939—262.
 Calcutta Municipal Act—79, 88.

- Campbell-Bannerman, Sir Henry—275.
 Campbell Medical School—91.
 Comte—16.
 Canada—25, 49, 106, 109.
 Connaught, Duke of—130.
 Canning, Lord—9, 275.
 Cape Town Agreement between India and the Union—119.
 Carey, Dr.—4.
 Cawnpur, Siege of—13.
 Caxton Hall—55.
 Census of 1941—259.
 Central control over Law & Order—101.
 Central Government—59, 97.
 Central Legislature, the—60.
 Chaitanya—388.
 Chakravarty, Mr. Abinash Chandra—88.
 Chakravarty, Mr. Dhiresh Chandra—351.
 Chakravarty, Mr. Shyam Sundar—39.
 Chamber of Commerce, the—32.
 Chamberlain, Sir Austin—154.
 Chamberlain, Mr. N.—189, 191, 286.
 Chancellor of the Calcutta University—40.
 Chandavarkar, N.—35, 244, 354.
 Charlu, Ananda—35.
 Chattari, the Hon'ble Nawab of—213, 376.
 Chitnavis, Bal Gangadhar—35.
 Chatterjee, Mr. B. C.—52, 262.
 Chaudhury, Khaliq-u-zaman—217.
 Chief Minister and Council Procedure in Bengal—279, 280.
 Chief Minister—72, 94, 215, 221.
 Chief Ministers on 1st April, 1937—213, 230.
 Chief Minister's resignation, the effect of the—273, 274, 275.
 Chintamani, Sir C. Y.—92, 93.
 Chowdhury, Mr. Rohini Kumar—246.
 Churchill, Mr.—286.
 Churchill's statement of 11th March, 1942—132.
 Civil Disobedience Movement—78.
 Civil Service—12, 336, 337.
 Class Areas Bill—118.
 Classical Association—55.
 Coalition Cabinet—216, 217, 255.
 Coalition Government—183, 254.
 Collective fines—269.
 College, M. A. O. at Aligarh—401, 402.
 Colonial Conference of 1907, the—102.
 Colonies—26.
 Colonial Self-Government—55, 61.
 Commonwealth—103.
 Communal Affiliations—70.
 Communal Award—165, 171, 219, 253, 287, 374, 375, 378, 380, 381, 383.
 Communal feelings—62, 77, 78, 381, 403.
 Communal Ratio in services in Bengal—380, 381.
 Communal Triangle, the—387, 396.
 Communal Representation—80.
 Compensation provision in the Indian Act 1935—322.
 Composition of the Lower House—286, 287.
 Comrade, the—408.
 Composition of the Upper House—287.
 Composition of the Provincial Legislature—287, 288, 289, 290.
 Congress, the Indian National—15, 21, 22, 51, 82, 121, 122, 124, 127, 131, 136, 141, 168, 181, 194, 215, 218, 348, 350, 351, 356, 357, 375, 389, 400, 401, 404, 410.
 Congress Committee (All India)—167, 169, 196, 207, 376.
 Congress Committee (All India) Resolution (March 18, 1937)—207.
 Congress Committee (All India) Resolution of 8th August 1942—139, 251.
 Congress, contact with Moslem Masses—219.
 Congress disciplinary action—351.
 Congress Election Manifesto—205, 206, 215, 229.
 Congress extermination of rival Parties—217.
 Congress Instrument of Instructions—223.
 Congress-League Scheme—62, 63, 65, 363, 407.

- Congress minority party permitted co-operation and coalition—220, 225.
 Congress Party—33, 177, 207, 238, 379.
 Congress Press—218, 225, 255.
 Congress Parliamentary Sub-Committee, the—212.
 Congress terms to U. P. Moslem League—217.
 Congress Premiers Conference—224, 253.
 Congress, Tripuri session—36, 167, 237.
 Congress Working Committee—356.
 Congress Working Committee resolution (28th April, 1937)—209.
 Congress Working Committee resolution of November 1939—371.
 Congress Working Committee Statement of the 14th September, 1939—122.
 Congress Working Committee resolution of the 9th July, 1940—124.
 Congress Working Committee demand of 7th July, 1940—375.
 Congress Working Committee resolution of the 14th July, 1942—138.
 Congress Working Committee's advice to the Congress members of the legislature—212.
 Congress Working Committee permission for office acceptance—214.
 Constitution Act 1935—128, 164, 175, 180, 188, 238, 250, 293.
 Constituent Assembly—122, 171, 371.
 Constitutional Club—94.
 Control in matters of Legislation—100.
 Cooper, the Hon'ble Sir D. B.—213.
 Control over provincial finance—100.
 Cordell Hull, Mr—128.
 Cotton, Sir Henry—31.
 Council(s)—60, 71.
 Council of Ministers, the—194, 367, 268, 279, 280.
 Council Secretaries—278.
 Coupland, R., Professor—136.
 Courtney, Lord—55.
 Criminal Law Amendment Act, Bengal—73, 76, 91.
 Cripps Mission—127, 132.
 Cripps Mission, effects of—137, 142.
 Cripps Mission, the, failure of the—137.
 Cripps Proposal—132, 133.
 Cripps Proposal withdrawn—136.
 Cripps, Sir Stafford—127, 132, 208.
 Criticisms of the Cripps Proposal—133, 135.
 Crawling order—69.
 Crown—28, 106, 109, 113, 249.
 Crown colonies—25.
 Curzon, Lord—28, 32, 35, 39, 40, 41, 42, 44, 45.
 Ceylone, Governor of—193.
 Cyclone in Midnapore—269.
- ### D
- Dalhousie, Lord—2.
 Dacca, Nawab Bahadur oi—45-255.
 Dacca Riots Enquiry Committee—382.
 Dain, Mr. J. R.—235.
 Dara Shiko, Prince—387.
 Das, Mr. C. R.—49, 74, 77, 82, 83, 84, 85, 95, 348, 358.
 Das, the Hon'ble Mr. B.—215, 236, 252.
 Das, Mrs. C. R.—74.
 Dattatraya—388.
 Dayal, Mr. Guru Raghubar—351.
 Dayananda Saraswati—7, 493.
 Defence Association—17.
 Defence of India Act, the—49, 57, 314.
 Defence of India Act (Amendment) Ordinance 1943—316.
 Defence of India Rules, the—198, 268, 315.
 Delhi—13, 57, 58, 66, 386, 396.
 Deportation—38.
 Derozio—16.
 Desai, Mr. Bhulabhai—209.
 Doshmukh, Mr. R. M.—232.
 Devolution Rules—98.
 Dewani, granting of—391.
 Direct Election—33.
 Dismissal of the Chief Minister of Sind—249.
 Dissolution of the Ministry—93.
 District Boards—16, 26.

- Distribution of Legislative Powers—303, 304.
- Divisional Commissioners, the abolition of—75.
- Doctrine of Lapse—2.
- Dominion(s)—63, 65, 69, 102, 107, 113, 163, 188.
- Dominion conventions—153.
- Dominion status—9, 23, 25, 104, 108, 122, 130, 131, 177, 265.
- Dufferin, Lord—19, 20, 21, 27, 28, 404.
- Durban City Council—119.
- Durham, Lord—109.
- Dutta, Babu Aswini Kumar—39.
- Dutta, Mr. Kamini Kumar—351.
- Dyarchy—65, 77, 81, 83, 92, 95, 348.
- Dyer, General—69.
- E**
- East India Company—1, 113, 391, 392.
- East India Loans Act, the—301.
- Eastern Bengal—43, 44, 46, 50, 92.
- Education Cess, the—78.
- Educational Conference—40, 41.
- Edward VIII—189.
- Egypt—67.
- Eire—113.
- Elections—70, 73, 76, 82, 206.
- Election to the Provincial Assemblies postponed—250.
- Electorate—95.
- Ellenborough, Lord—396.
- Elgin, Lord—37.
- Empire Delegation—107.
- England—14, 26, 37, 61.
- Englishman, The—10, 14, 26.
- European(s)—14, 17, 68, 74, 80.
- Europe—6, 51, 69.
- Excise system—19.
- Executive Council(s)—55, 56, 57, 58, 59, 63, 64, 65, 75, 76, 92, 124, 376.
- Extremism—23, 24, 37, 39, 46, 50, 51, 57, 66, 69.
- Extremist Journal—52, 64.
- Extremist Press, the—82.
- F**
- Factors retarding the growth of Parliamentary rule—181.
- Faucett—31.
- Faridpur Conference—84, 85.
- Federal Court, the—310, 311, 316, 317, 319, 323, 331, 332, 341, 342, 343, 344, 345.
- Federal Scheme, concessions to States—161-163.
- Federation—25, 123, 150, 151, 152, 154, 158, 166, 241.
- Federation as viewed by parties—166.
- (a) the Congress—166-169.
- (b) the National Liberal Federation of India—169-170.
- (c) the Hindu Mahasabha—170.
- (d) the All India Moslem League—170-173.
- (e) the Joint conference of the Indian Princes etc.—173.
- Federation, defects of—152-153.
- Federation of Moslem States—172.
- Federation of Non-Moslem States—172.
- Federation suspended—176.
- Finer, Dr.—250.
- Finsbury—25.
- Financial Position between the Centre and the Provinces—296.
- Fischer, Mr. Louis—136.
- Forward Bloc of the Congress, the—168, 355, 356, 357.
- Franchise—24, 59, 79, 286, 290.
- Fraser, Lovet—42.
- Fraser, Sir Andrew—43.
- Friend of India (The Statesman)—10, 13.
- Frontier Policy—39.
- Fuehrer, the—189.
- Fuller, Sir Bampfylde—47.
- G**
- Gandhi, Mahatma—49, 66, 67, 69, 82, 85, 121, 130, 138, 140, 168, 209, 212, 221, 223, 231, 233, 235, 248, 354, 355, 356, 363, 375.
- Gandhi-Anderson discussion—231, 258.
- Gandhi-Irwin Agreement of 1931—130, 168, 234.
- Garibaldi—16.
- Ghose, Mr. Arobindo—48, 358.
- Ghose, Mr. Barindra Kumar—48, 52.
- Ghose, Girish Chandra—8.

- Ghose, Motilal—10.
 Ghose, Dr. Sir Rash Behari—23, 35.
 Ghose, Sishir Kumar—10.
 Ghuznavi, Sir A. H.—253, 378.
 Gladstone, Mr.—31, 145, 188, 273.
 Gokhale—35, 41.
 Gole, Mr. L. B.—232.
 Goode, Mr. S. W.—79.
 Goswami, Narendra—53.
 Government(s)—53, 54, 56, 57, 58, 59, 60, 61, 68, 69, 71, 72, 76, 78.
 Government of India—11, 13, 16, 28, 35, 55, 60, 63.
 Government of India Act, 1858—113.
 Government of India Act 1892, the—31, 32.
 Government of India Act 1909—50.
 Government of India Act, 1919—70, 98, 99, 113, 130, 180.
 Government of India Act, 1935—76, 114, 145, 146, 163, 167, 169, 180, 183, 185, 193, 252, 332.
 Government, Dyarchical form of—64.
 Government, power of interference—311.
 Government of India Research Institute—101.
 Governor-General of India—20, 32, 63.
 Governor-General's ordinance-making power—317.
 Governor-General's authority during emergency period—318.
 Governor-General's address to the Central Legislature on the 20th November, 1940—123.
 Governor-General's Council, the expansion of the—121, 124, 143, 144.
 Governor-General's Executive Council—63, 117.
 Governor-General in Council—55, 180.
 Governor-General's declaration on the 18th October, 1939, the—121.
 Governor-General's declaration on the 7th August 1940, the—121.
 Governor-General's declaration of the 21st June 1937 on the Governor's power of interference—213.
 Governor—58, 63, 65, 72, 74, 79, 183, 184, 186, 189, 195, 198, 199, 200, 201, 207, 209, 210, 219, 220, 230.
 Governor's discretionary acts—202-205.
 Governor's action—211.
 Governor's interference—249.
 Governor's interference, the grounds of—229.
 Governor's proclamation—238, 239.
 Governor's intervention sought—262, 263.
 Governor's special responsibility—271, 272.
 Governor's special legislative power—311.
 Governor's powers under sec. 93 of the Govt. of India Act—276.
 Governor's rule making power—278.
 Great Britain—61, 108.
 Great Moguls—386, 389, 394, 395.
 Greene, Mr. Wilfrid—156.
 Gujranwalla—68, 69.
 Gulshan-i-Bahar—10.
 Goderich, Lord (afterwards Lord Ripon)—275.
 Gurkha—45, 47, 50.
 Gurudwara problem—93.
 Gurukul cult—7.
 Gwalior Conference—173.
 Gwyer, Sir Maurice—243, 343.
- ## H
- Habeas Corpus applications—316.
 Hailey, Sir Malcolm—130.
 Halifax, Lord—27.
 Hamdard—408.
 Hare, David—4.
 Hardinge, Lord (Despatch)—57.
 Hardinge, Lord—58.
 Harkara—10.
 Harijan—223, 355.
 Her Majesty's Government—32, 35.
 Hertzog—112.
 Hidayatulla, the Hon'ble Sir Ghulam Hussain—213, 224, 249.
 High Courts—340, 341, 342, 344, 345.
 Hill exodus—75.
 Hindrance to the working of representative Government—181.

- Hindu(s)—2, 14, 40, 45, 46, 50, 67, 71, 73, 397.
 Hindu, the—10, 77, 80.
 Hindu College, the—4, 6.
 Hindu Mahasabha and the minority problem—354.
 Hindu Mahasabha's grounds for opposing communal Award—374.
 Hindu Mahsabha, the—124, 136, 166, 170, 227, 244, 347, 353, 357, 373, 374, 377.
 Hindu Mahasabha resolution of December, 1939—260.
 Hindu Patriot, the—10.
 Hindu Religious revival—16.
 Hindu-Moslem riots—76, 77.
 Hindu-Moslem Unity—62, 67, 354, 398.
 Hindu Press, the—268.
 Hindi-Urdu controversy—402.
 His Majesty the King Emperor's message—130.
 His Majesty's Government—63.
 His Majesty's Opposition—20.
 Hoare, Sir Samuel—145, 150, 154, 174, 197, 200.
 Holmes, Mr. Valentine—156.
 Holdsworth, Sir William—158.
 Home Rule League—57, 61.
 Hossain, Sir Fazli—71.
 House of Commons—22, 28, 32, 63, 151.
 House of Lords—50, 54, 55, 150, 179.
 Hubback, Sir John—235.
 Hunger strike—257, 258.
 Hume, Allan—19, 20, 21, 31.
 Hunter, Sir William—392, 394.
 Huq, the Hon'ble Mr. Fazlul—213, 220, 226, 254, 255, 258, 260, 264, 266, 267, 268, 271, 272, 376, 280.
 Huq Ministry—241.
 Huque, Khan Bahadur Sir Muhammad Azizul—254.
 Huque, Mr. Mazarul—409.
 Hydari Committee—173.
 Hydari, Sir Akbar—173.
- I**
- Ibrahim, Mr. Hafiz Muhammed—218.
 Ilbert Bill, the—17.
 Imperial Assemblage in Delhi—11, 16.
 Imperial Conference—118.
 Imperial Council—60, 61.
 Imperial Legislative Council—62, 63, 64, 66.
 Imperial War Cabinet in 1917-18, the—105, 106.
 Imperial War Conference, the—106, 107, 109.
 Imperial Relations Committee, the—103, 110.
 Independence—237, 375, 376, 411.
 Independence Day Pledge—131.
 India—4, 15, 22, 34, 45, 61, 69, 106, 107, 109, 117, 119, 148.
 India declared a belligerent—314.
 India Bill—31.
 India and Burma (Temporary and Miscellaneous Provisions) Act 1942—240.
 India and Burma (Miscellaneous Amendments) Act 1940—333.
 India Council—22, 24.
 India office—210.
 India's cultural unity—15.
 Indian Administration—16, 22, 28.
 Indian Arms Act—24.
 Indian Army—2, 14, 67.
 Indian Army Recruitment—13.
 Indian Association, the—14, 18.
 Indian Civil Service—14, 22, 24, 30, 64, 75, 79.
 Indian Councils Bill of 1892—31.
 Indian Chiefs, the—16.
 Indian Councils Act of 1892—31.
 Indianisation—91.
 Indian Debate, the (8th April 1940)—179.
 Indian Federation—147, 149.
 Indian High Commissioner—108.
 Indians in British Columbia—119.
 Indian Medical Service—91.
 Indian Mirror, the—10.
 Indian Nation—15, 62.
 Indian National Conference—18.
 Indian Opinion—17, 20.
 Indian Overseas—67.
 Indian Press—10, 57.
 Indian Rulers—154, 167, 177.
 Indian Soldier—13, 48, 61, 67, 69.
 Indian States—146, 151, 156, 157, 176, 356.
 Indian States, advantages from Federation—160.

Indian States Committee, the (the Butter Committee)—156, 157, 158.
 Indian States, merger of small—174.
 Indian Statutory Commission, 1929—147.
 Instrument of Accession—158, 165, 166, 173.
 Instrument of Instructions—116, 130, 183, 195, 198.
 Interim Ministries—212.
 Irish Free State, the—104, 106, 109, 112, 119.
 Itinerant Courts—19.

J

Jagat Narayan, Pandit—93.
 Jallianwalla Bag—69.
 Jamailt-ul-Ulema—372.
 Japan—51, 107.
 Jawaharlal, Dr.—351.
 Jayakar, Mr. M. R.—136, 349.
 Jehangir, Sir Cowasji—244, 354.
 Jennings, Prof. Ivor—273, 274.
 Jinnah, Mr.—127, 139, 171, 173, 218, 219, 242, 243, 266, 254, 355, 362, 363, 365, 366, 367, 372, 376, 409.
 Jinnah and the fourteen points—363, 364.
 Jinnah and the Pakistan creed—366.
 Jinnah and the Moslem League's Demand—370.
 Jinnah's Charges against the Congress—243, 244.
 Jinnah-Jawaharlal correspondence—370.
 Jinnah's statement of 5th May, 1941—127.
 Jizya, the—386.
 John Company—11.
 Joint conference of Indian Princes etc.—173.
 Joint Parliamentary Committee, the—164.
 Joint Responsibility—93, 183, 192.
 Joint Select Committee, the—180.
 Joint statement of non-Congress Political Parties—244.
 Joint statement of party leaders—354.
 Judicial Committee, the—157.
 Jugantar, the—52.
 Jury Trial—24.

Justice Party—70, 71, 72, 73, 87, 94, 360.
 Juvenile offenders—20.

K

Kabir—388.
 Kakori prisoner—229.
 Keith, Professor—112, 118, 120, 154, 157, 201, 210, 273, 274.
 Kelkar, Mr. N. C.—244, 349, 354.
 Kennedy, Miss—47.
 Kennedy, Mrs.—47.
 Keshari, the—10.
 Khalifa, the—62, 408.
 Khalifa, the abolition of the office of—77.
 Khalsa National Party—362.
 Khan, Alivardi—391.
 Khan, Chengiz—386.
 Khan, Haji Abdur Rashid—88.
 Khan-i-Khanan Abdur Rahim—387.
 Khan, H. H. Aga—409.
 Khan, Malik Khizar Hayat—242.
 Khan, Nawab Ismail—217.
 Khan, Sardar Aurangzeb—251.
 Khan, the Hon'ble Nawab Sir Sahibzada Abdul Quayam—213.
 Khan, Syed Ahmad—387.
 Khan, the Hon'ble Sir Sikandar Hyat—213, 230, 236, 242, 261, 361, 362, 376.
 Khare, the Hon'ble Dr. N. B.—215, 228, 233, 234, 355.
 Kher, the Hon'ble Mr. B. G.—215.
 Khilafat Movement—24, 77, 84, 410.
 King—187, 188, 189.
 Kingsford, Mr.—47.
 King Emperor—57, 187.
 King Emperor's visit—48.
 Kitchener, Lord—58.
 Kitchlew, Dr.—68.
 Komagata Maru incident, the—49.
 Krishak Proja Party, the—242, 254.
 Kundu, Mr. Nishit Nath—351.
 Kunzru, Ajodhyanath—35.
 Kutab Shahi Kings—386.

L

Lahiri, Mr. Ashutosh—357.
 Lake, Lord—394.
 Land Acquisition Amendment Bill, the—63.
 Landed Interest—10.
 Land Revenue Sales (Amendment) Bill 1941—236.

Landlords—70, 77, 78.
 Lansbury, Mr. 274.
 Laski, Professor—112.
 Law and Order—58, 73, 74.
 Layton, Mr. W. T. 295.
 League of Nations, the—105, 107, 119, 254.
 League-Proja coalition—380.
 Legislative Councils—11, 19, 22, 27, 28, 29, 37, 55, 63.
 Legislatures—27, 33, 36, 36, 60, 65, 77.
 Liberals—70, 87, 359.
 Liberal Party—358, 359.
 Liberal Federation, the—227, 347, 363, 377.
 Lieutenant Governor of Bengal—43, 53, 55.
 Lieutenant Governor of the Punjab—68, 69.
 Linlithgow, Lord—121, 123, 150, 151, 175, 225.
 Linlithgow's announcement in 1937—151.
 Linlithgow's pronouncement of 10th January, 1940—129.
 Lloyd, George—107.
 Loans by Provinces—99.
 Local bodies—17, 26, 32.
 Local Self-Government—16, 25.
 Locarno Treaty, the—110.
 Lord Irwin's statement in 1929—130.
 Lothian, Lord—155, 208.
 Lucknow Pact—62.
 Lucknow, Seize of—13.
 Lytton, Lord—14, 16.

M

Macaulay, Lord—4, 229.
 Macdonald, Mr.—274.
 McNair, Mr. Justice—382.
 Madras—10, 18, 19, 20, 35, 55, 58, 70, 71, 72, 73, 84, 87, 94, 207, 397.
 Madras Agriculturists' Debt Relief Act 1938—331.
 Madras City Municipal Corporation—72.
 Madras Congress Legislative Party—140.
 Madras Estates Land (Orissa Amendment) Bill—236.
 Madras Sales Act—345.
 Madras University, the—72.

Mahajan Sabha—18.
 Maharajadhiraja of Darbhanga—263.
 Mahammedan Province—44.
 Mahamod-ul-Hasan, Maulana—409.
 Maharastra—10, 51, 54, 388.
 Mahendra Pratap, Raja—409.
 Mahmudabad, Raja Sahib of—409.
 Marathas—387, 393, 397.
 Maratha States—1.
 Maratha Power—388.
 Majumdar, Moulvi Jonab Ali—263.
 Majlis-i-Ahrar—372.
 Malavya, Pandit Madan Mohan—373, 403.
 Malta case (Sammut v. Strickland)—157.
 Marshman, John—4.
 Martial Law—68.
 Mazumdar, Ambica Charan—18, 35, 65.
 Mazzini—16.
 Medical College, the Calcutta—71.
 Medical Mission to Constantinople—408.
 Mehta, Mr. Jamunadas—244, 354.
 Mehta, Mr. K. D.—233.
 Mehta, Sir Pheroze Shah—19, 35, 41.
 Memorandum of the Indian Delegation, the—181.
 Mesopotamia—48, 67.
 Meston Award, the—81, 295.
 Meston Award, the defects of the—295.
 Metcalfe, Sir Charles—9.
 Midnapore—51, 231, 269.
 Midnapore Conference—51, 231.
 Military Expenditure—24.
 Military Mission to Tibet—
 Ministers—65, 71, 72, 74, 75, 88, 92, 93, 96, 186, 189, 190, 192, 197, 255.
 Minister (non-member) in the Upper House—291.
 Ministers and Governors, the relation of—87.
 Ministers, salary of—65, 83, 222.
 Ministry—72, 73, 74, 76, 79, 124, 191, 192, 196, 215, 221, 257, 264, 269.
 Ministry and the permanent officials—272.
 Ministry, the Moslem—77.

- Ministry, the Congress in Bihar—337.
 Minto, Lord—404.
 Minority Ministry—200, 210.
 Mir Kashim—391.
 Mirzaffar—391.
 Misra, Pt. Godavari—247.
 Mitter, Krishna Kumar—39.
 Mitter, Mr. Satyendra Chandra—252, 291.
 Moderates—23, 42, 56, 57, 64, 65, 66, 70, 358.
 Moderate Party—52.
 Moderate conference—358.
 Mogul(s)—19, 43, 385.
 Mogul Empire—36.
 Mogul system of administration—389.
 Mahabharata, the—387.
 Mohakosal group, the—232.
 Mohani, Hasrat—409.
 Money Lenders' Bill, the—263.
 Momin Conference—372.
 Montagu, Mr. E.—63, 64, 358.
 Montagu-Chelmsford Reforms—49, 63, 69, 73, 77, 79, 87, 97, 180, 358.
 Montagu-Chelmsford Report—64.
 Montagu-Mission—363.
 Mookerjee, Dr. Syama Prosad—260, 268, 270, 357.
 Moonjee, Dr.—349.
 Moore vs. Attorney-General for Irish Free State, 1935—135.
 Morgan, Mr. J. H.—159.
 Morley, Lord—42, 50, 51, 54, 58.
 Morley-Minto Reforms—55, 57, 59, 60, 61, 62, 145, 403.
 Morrison, Sir Theodore—396.
 Moslems—2, 14, 24, 44, 45, 46, 50, 56, 62, 67, 71, 73, 77, 385, 395, 397, 408.
 Moslem claim for separate electorates—403.
 Moslem community—23, 62, 400, 402.
 Moslem kings of Gour, the—387.
 Moslem League, the—24, 62, 66, 121, 124, 136, 139, 166, 170, 194, 216, 218, 226, 227, 241, 242, 250, 251, 254, 261, 265, 268, 347, 355, 362, 376, 389, 396, 403, 405, 409, 410.
 Moslem League Coalition Cabinet—236, 245.
 Moslem League Resolution 1913—409.
 Moslem deputation to Lord Minto—404.
 Moslem League attitude to the Cripps' proposal—410.
 Moslem League Creed, change of—219.
 Moslem League Ministry in Bengal—357.
 Moslem League Party—379, 383.
 Moslem League Parliamentary Board—379.
 Moslem Press—268, 408.
 Mudaliar, Sir A. Ramaswami—108.
 Muddiman Committee, the—86, 92, 96.
 Mudholkar, R. N.—35.
 Muhammad Ghori—386.
 Muhammad of Ghuzni—386.
 Mukherjee, Sir Manmatha Nath—232.
 Mukherjee, Harish Chandra—10.
 Mukherji, Ashutosh—35.
 Munich Agreement, the (1938)—189.
 Municipalities—16, 17, 26, 27, 32.
 Munshi, Mr. K. M.—142, 375.
 Muir, Mr. Ramsay—347.
 Mutiny, after-effects of—3.
 Mutiny, the Indian—1, 2, 3, 9, 13, 14, 67, 397, 400.
 Muzaffarpur—47, 53.
- N**
- Nair, Sankaran—35.
 Naoroji, Dadabhai—25, 36.
 Nanak—388.
 Nariman, Mr. K. F.—355.
 Nation-building departments—81, 82.
 Nation in Making—47, 400.
 National Conference—18, 19, 20.
 National Cabinet—376.
 National Defence Council—125, 248, 266, 376.
 National Government—410.
 National Liberal Federation—23, 65, 126, 136, 166, 169, 359.
 National Press, the—10, 74.
 Nationalist movement—16, 18, 27, 46, 51, 52.
 Nationalist Party—379.
 National Progressive Party—362.

- Nationalist Parliament—18.
 Naval Discipline Act, the—116.
 Nawaz, Begam Shah—376.
 Nawab of Bengal—391.
 Nazimuddin, Sir Khawaja—254, 257, 266, 276.
 Nehru Committee Plan—130.
 Nehru, on office acceptance—215, 218, 221, 223.
 Nehru, Pandit Jawharlal—131, 136, 205, 207, 210, 237, 252, 254, 257, 350, 351, 354.
 Nehru, Pandit Motilal—49, 82, 85, 86, 349.
 New India—64.
 New Zealand—119.
 Nikhil Banga Proja Samity and its objects—379.
 Neimeyer, Sir Otto—296, 297.
 Neimeyer scheme—297, 299, 301.
 Nizam, of Hyderabad—156.
 No-changers—82.
 Noman, Prof. Mohammad—395.
 No-confidence Motion—224, 264.
 Non-Brahmin Party—71, 72.
 Non-Cooperation—69, 85.
 Non-Cooperation movement—49, 70, 72, 74.
 Non-Party Conference—125, 128, 139, 246.
 Non-Party Conference demand in February 1942—377.
 Non-party Leaders' Appeal—116.
 North-West Frontier Province—22, 226, 251.
 Noyace, Sir Frank—292.
- O**
- O'Dwyer, Sir Michael—68.
 Olcott, Col.—7.
 Opposition—71, 72, 73, 184, 186, 194, 218, 256, 263, 264, 348, 349.
 Orissa—43, 207, 225, 247.
 Ottoman Empire—61.
 Oudh,—2, 22.
 Oxford Union—26.
- P**
- Pabna—262.
 Pacific War Council—108.
 Pakistan—139, 140, 141, 142, 172, 173, 369, 371, 410, 411.
 Pal, Bepin Chandra—23.
 Pal, Dr. Satya—68.
 Pal, Krishna Das—10.
 Palmerstone, Lord—275.
 Panagal, Raja of—94.
 Pan-Islamism—142, 408.
 Pant, Pt. Hon'ble Govinda Ballav—215, 252.
 Pantalu, N. Subharao—35.
 Paramhansa, Ramkrishna—8.
 Paramount Power—154, 157.
 Parlakimedi, the Hon'ble Maharaja—247.
 Parliament—25, 31.
 Parliamentary Democracy—31.
 Parliamentary Institutions—9, 35.
 Parliamentary Secretaries—252, 253.
 Parthana Samaj—6.
 Partition of Bengal—39, 42, 43, 48, 58, 403.
 Party system—94.
 Patel, Mr. Vithalbhai—86, 248.
 Patel, Sardar Ballabhai—216, 220, 231, 244.
 Patriotic Association, the—23, 400, 401.
 Payne, Mr.—79.
 Peace conference, the—105, 107.
 Peel, Sir Robert—273, 274, 275.
 Permanent officials, the attitude of the—95, 96.
 Pinnel, Mr. L. G.—262.
 Pirpur, Raja of—243.
 Plague, bubonic—37.
 Plassey, the battle of—391.
 Pledge of the Secretary of State or Governor-General—129.
 Police—19, 74, 269.
 Political Prisoners—49, 84, 93, 229, 230, 257.
 Political Status of Provinces and States, the—153.
 Poona Pact, the—165, 253, 287.
 Portuguese, the—1.
 Post-Mutiny—14.
 Prerogatives of the Crown, the—114.
 President—60.
 Press—13, 38, 40.
 Press Act of 1857, the—9.
 Press Act of 1908, the—56.
 Press Act, the Vernacular—14.
 Press Note, A, by the Government of Bengal re: Midnapore—270.
 Primary Education—255.
 Prime Minister—183, 184, 191.

- Princes—147, 148, 149, 153, 154, 156, 166, 174.
 Princes' Case—156.
 Prince of Wales—11.
 Princes' reasons for not joining Federation—158-160.
 Prithwiraj—403.
 Privy Council, the—341, 345.
 Prize Courts, the law of—116.
 Proclamation of 1858—37.
 Professions Tax Limitation Act, 1941—333.
 Progressive Coalition Ministers, the—196.
 Progressive Coalition Party, the—266, 380.
 Prosad, Dr. Rajendra—220, 234, 243, 337, 351.
 Prosecution for Sedition—39.
 Provincialism in Bengal—339.
 Provincial Audit Resolution—99.
 Provincial Autonomy under the G.G.'s emergency powers—319.
 Provincial Autonomy and the Defence of India Act—319.
 Provincial Autonomy—151, 212, 215, 249, 256, 282, 292.
 Provincial legislature, the power of—323.
 Provincial Finance Ministers' Conference—299.
 Provincial Governments—59, 65, 74, 81.
 Provincial Governors—32.
 Provincial Legislative Council—60, 63.
 Provincial Moslem League Party—379.
 Provincial revenue charged with expenditure—302, 303.
 Public Safety Bill—248.
 Public Services—11, 12, 18, 72.
 Public Service Commission—192.
 Punjab, the—14, 22, 39, 48, 49, 51, 57, 67, 68, 71, 83, 207, 225.
 Punjab atrocities—69.
 Punjab Alienation of Land (2nd Amendment) Act, 1938—327, 328, 345.
 Punjab Marketing Bill, the—263.
 Punjab National Unionists—71, 72, 242, 360, 361, 362.
 Punjab Provincial Hindu Sabha, the—263.
 Punjab Restitution of Mortgaged Lands Act (IV of 1938)—329, 345.
 Punjab Riot—69.
- Q**
- Quayam, Sir Abdul—224.
 Queen's Commission—13.
 Queen's Proclamation—2, 12, 36, 40, 42.
 Queen Victoria—27, 39.
- R**
- Rahim—388.
 Ramayana, the—387.
 Ram—388.
 Ramanuja—388.
 Rahamatoola, Sir Ibrahim—409.
 Rai, Lala Lajpat—7, 23, 39.
 Raiyatwari Settlement in Madras and Bombay—30.
 Rajagopalachari, Mr. C.—136, 215.
 Rajputs, the—387.
 Ranade—7.
 Rana Pratap—403.
 Rand, Mr. (President of the Plague Committee)—38.
 Rangachariar, Dewan Bahadur—86.
 Rao, the Hon'ble Mr. E. Raghabendra—213.
 Reading, Lord—154.
 Reading, Lord, letter to H.E.H. the Nizam—156-157.
 Reciprocity Acts of South Africa—120.
 Reddy, the Hon'ble Sir K. V.—92, 213.
 Regency Act of 1937, the—189.
 Regiments, constitution of—13.
 Regiments, mixed—14.
 Regulation III of 1818—39, 56.
 Regulation XXV of 1827—38.
 Regulating Act, 1773—339.
 Reid, Sir Robert—247.
 Representative Government—11, 64.
 Repression—54, 56, 269.
 Repressive Policy—47.
 Reserved Departments—73 82.
 Reserved side of the Government—74, 75.
 Reservation of seats—262.
 Residuary Power of Taxation—98.

- Resignation of the Congress Ministry—375.
 Responsible Government—61.
 Responsive Co-operation—85.
 Resumption of lands—392.
 Retrenchment—80.
 Revenues, separation of Central and Provincial—63.
 Revolutionaries—58.
 Revolution of 1857—396.
 Revolutionary movement—49, 58, 66.
 Richardson, Captain—16.
 Ripon, Lord—16, 17, 18, 19, 21, 26.
 Rohilla War—2.
 Ronaldshay, Lord—73, 79.
 Roosevelt—127.
 Rosebery, Lord—102.
 Round Table Conference—86, 130, 131, 148, 154, 410.
 Rowland, Mr. Justice—317.
 Rowlatt Act—57, 67.
 Rowlatt, Sir Sidney—66.
 Royal Commission—22.
 Royal Executive Functions and Seals Act—112.
 Royal Titles Act, the, 1876—113.
 Roy, Raja Rammohan—4, 5, 8, 15, 358.
 Rural Primary Education Bill—77, 78.
 Russia—51.
 Russel, Lord—275.
 Russo-Japanese War—51.
 Ryots and the peasants—33.
- S**
- Saadulla Ministry—225, 241.
 Saadulla, the Hon'ble Sir Muhammad—213, 224, 242, 246, 247, 376.
 Sadar Dewani Adalat—391.
 Safeguards—199, 211.
 Safeguards for Moslems—219.
 Sahib, Dr. Khan—224.
 Salisbury, Lord—14, 31, 275.
 Samachar Sandharsan—10.
 Sandhurst, Indian—86.
 Sankar—388.
 Sankey, Lord—135.
 Sapru, Sir Tej Bahadur—125, 126, 127, 128, 136, 208.
 Sarker, Mr. Nalini Ranjan—245, 255, 265.
 Sastri, Mr. Srinivasa—359.
 Savarkar, Mr. V. D.—244, 354, 373.
 Scheduled taxes—98.
 Scheme announced by the Communique of Government, 21st July, 1941—376.
 Schuster, Sir George—292.
 Schwaner, Mr.—33.
 Scott, Sir Leslie F.—156.
 Second Chamber—290, 291.
 Secretary of State's Council, the—63.
 Secretary of State for India—14, 59, 63, 64, 75, 80, 98, 99.
 Secretary for India, Lord Dufferin's despatch to the—27.
 Secretaries—96.
 Secret Society—53.
 Section 93—211.
 Sedition—47.
 Seditious Meetings Act, the—57.
 Self-Government—52, 54, 65, 66.
 Sen, Keshab Chandra—58.
 Separate Electorates—56, 62, 78, 79, 262, 407.
 Separate representation—63.
 Separation of the judiciary from the executive—18, 24.
 Services, Imperial—81.
 Services, Provincial—80.
 Setalvad, Sir Chimanlal—244, 354.
 Shajahan—395.
 Shareef—232.
 Shaha Alam—391.
 Shradhananda, Swami—7, 403.
 Shivaji—403.
 Sikhs, the—3, 67, 71, 393.
 Silver Jubilee of Queen Victoria—27.
 Silverman, Mr.—250.
 Simon Commission, the—73, 93, 147, 175, 284, 350.
 Sind Moslem Conference—172.
 Singh, Gurdit—49.
 Singh, Maraja Yasavanta—386.
 Singh, Raja Jai—386.
 Singh, the Hon'ble Mr. Sreekrishna—215, 235.
 Singh, Dr. Satyanarain—351.
 Singh, Sardar Ajit—39.
 Sinha, Lord S. P.—57.
 Sitaramiya, Dr. Pattabhi—356.
 Skeen Committee, the—85.

- Skeen, Lieut. General Sir Andrew —86.
 Smuts, General—12, 118, 120.
 Social abuses—15.
 South Africa—66, 118.
 South Africa, Union of—119.
 Southern India—37.
 Somervell, Mr. Donald—156.
 Special Criminal Courts Ordinance, 1942—318.
 Stanley, Lord—151.
 Standing Committees—278.
 State(s)—25, 41.
 Statesman, the—84.
 Status of the Union Act, the—112.
 Sultan-ul-Akbar—10.
 Supreme Government—41.
 Supreme Court—339.
 Supreme Legislative Council, the —28.
 Surcharge—90.
 Suspension of Constitution—83.
 Swadeshi—57.
 Swaraj—84, 85.
 Swaraj Party—70, 71, 77, 78, 82, 85, 88, 249, 348, 349, 350.
 Swarajist—72, 95.
- T**
- Tagore, Maharshi Debendra Nath —5.
 Tagore, Dr. Rabindra Nath—258, 358, 378.
 Talpur, Mr. Bundehali Khan—248.
 Tandon, Mr. Purshottamdas—251, 252.
 Taxation—294.
 Taxation of Agricultural Incomes —263.
 Telang, K. T.—19, 21.
 Temperance Movement—16.
 Terrorism—47, 48, 49, 73, 74, 76, 78, 82, 85, 89.
 Terrorist movement in Bengal—47, 48, 49.
 Terrorist Outrages Act, the—91.
 Theosophical movement—7.
 Thomas, Mr. J. H.—193.
 Tilak, Bal Gangadhar—23, 39, 64, 403.
 Timur—386.
 Tipu Sultan—1.
 Trade Union of Worker, the—257.
 Trading and Occupation of Land (Natal and Transval) Bill, 1943 —119.
 Transferred Departments—73.
 Transportation—39.
 Treatment of the press to the Coalition Cabinet, Bengal—267.
 Treaty of 1938, the—113.
 Tribune, the—10.
 Turkey—61, 67, 408.
 Tukaram—388.
 Two-Nation Theory—172.
 Tyabji. Badaruddin—19.
- U**
- Under-Secretary of State for India —29, 33.
 Union Law, the—119.
 Union of South Africa, the—102.
 United Kingdom, the—25.
 United Provinces, the—13, 35, 207, 217, 218, 225.
 United Provinces Regularisation of Remissions Act of 1938—311, 331.
 United States of India—25, 107.
 Universities, the—3, 32.
 University education, modification of the—40.
 Universities Commission, the—40.
 Universities Bill, the —41, 42.
 University of Calcutta, the—90.
 U. P. Provincial Congress Tenancy Sub-Committee—222.
 Upper India—51.
- V**
- Vaishnav religion—8.
 Varadachariar, Sir—317.
 Vedas, the—5, 7.
 Vedic religion, the—4, 7, 8.
 Viceroy—14, 16, 20, 27, 32, 39, 40, 42, 58.
 Viceroy's Commission, the—13.
 Viceroy, the title of—115.
 Vijayaraghavachariya, C.—35.
 Violence, acts of—40.
 Violence, cult of—52.
 Vivekananda, Swami—8.
- W**
- Wacha, Dinshaw—35, 65.
 Wahabi Movement—411.
 War, the—61, 67, 68, 69, 104, 121, 216, 293, 375.

- War, the (1914)—14, 48, 57, 408.
 War Advisory Council—122, 124.
 War, dissociation of India from the—216.
 War loans—68.
 Wars of aggression, the—2.
 Wardha—138.
 Warren Hastings—2, 4, 392.
 Wedderburn, Sir William—31
 Wellesley, Lord—2.
 Whitehall—59, 91
 White Rate-Payers' Association, the—119.
 William Bentinck, Lord—4.
 Willingdon, Lord—72.
 Wyllie, Sir William Curzon—53.
- Y**
- Yoga Vasistha, the—387.
 Yule, George—31.
 Yunus, the Hon'ble Mr. Mahmed—213.
- Z**
- Zafrullah, Sir M.—317.
 Zetland, Lord—152, 179, 208, 369.
 Zimmern, Prof.—117

- War, the (1914)—14, 48, 57, 408.
 War Advisory Council—122, 124.
 War, dissociation of India from
 the—216.
 War loans—68.
 Wars of aggression, the—2.
 Wardha—138.
 Warren Hastings—2, 4, 392.
 Wedderburn, Sir William—31
 Wellesley, Lord—2.
 Whitehall—59, 91
 White Rate-Payers' Association,
 the—119.
 William Bentinck, Lord—4.
 Willingdon, Lord—72.
 Wyllie, Sir William Curzon—53.
- Y**
- Yoga Vasistha, the—387.
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 Yunus, the Hon'ble Mr. Mahmed
 —213.
- Z**
- Zafrullah, Sir M.—317.
 Zetland, Lord—152, 179, 208, 369.
 Zimmern, Prof.—117